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**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Finance Docket No. 35239

**ALLEGHENY VALLEY RAILROAD COMPANY
PETITION FOR DECLARATORY ORDER**

**THE BUNCHE COMPANY'S
OPENING BRIEF FOLLOWING REMAND
FROM UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

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THE BUNCHE COMPANY**

Dated: April 11, 2011

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Pursuant to 49 C.F.R. § 1112.2 and the Decision served in this proceeding on March 21, 2011, The Buncher Company ("Buncher") hereby submits this Opening Brief Following Remand in opposition to Allegheny Valley Railroad Company's Petition for Declaratory Order. For the reasons set forth herein, Buncher objects to the claims made by the Allegheny Valley Railroad Company ("AVRR") and respectfully requests that the Surface Transportation Board ("Board") issue an order declaring either that it has no jurisdiction over this matter or that AVRR does not have an active easement over the property owned by Buncher between 16th Street and 21st Street in the City of Pittsburgh, Pennsylvania.

I. Introduction; The Court of Appeals Remand Order

AVRR filed a Petition for Declaratory Order in April 2009 requesting a ruling that it had acquired an active rail easement across Buncher's property from Consolidated Rail Corporation ("Conrail") in 1995. Buncher responded that the Board did not have jurisdiction because the Petition required consideration of original Conrail conveyance documents from the Final System Plan and because Conrail had abandoned any line of railroad in the relevant area in any event. By Decision served June 15, 2010, the Board determined that it had jurisdiction and that AVRR had an active rail easement across Buncher's property.

In its Decision, the Board found that a February 1984 Conrail abandonment application submitted into evidence by Buncher applied instead to another, separate line of railroad that AVRR had argued was located in a nearby area of Smallman Street rather than along Buncher's property. When Buncher received the Board's Decision, it perfected an appeal to the United States Court of Appeals for the District of Columbia Circuit. In light of the Board's announcement of its adoption of AVRR's 2-line of railroad theory, Buncher also searched for further information on Conrail abandonments in the Smallman Street area. While the matter was on appeal, Buncher located other abandonment applications filed by Conrail in 1984 that dealt directly with a line of railroad in the relevant area along Smallman Street. Buncher filed a Motion to Adduce Additional Evidence with the D.C. Circuit asserting that this additional evidence showed the Board did not have jurisdiction and was contrary to the Decision issued by the Board. At the request of the Board (by and through its counsel), with the consent of AVRR and Buncher, the Court of Appeals by Order dated January 26, 2011 remanded the matter to the Board for consideration of the additional evidence identified by Buncher and to permit the Board to review its rulings both as to jurisdiction and the merits.

By Decision served February 18, 2011, the Board reopened this proceeding. Following the remand by the Court of Appeals, AVRR propounded written discovery on Buncher regarding the additional evidence. Buncher responded to the Interrogatories and discovery is now complete. At the request of the Board, the parties proposed a briefing schedule which the Board accepted by its Decision served March 21, 2011. By that Decision, the Board directed Buncher to submit this opening brief on remand by April 11, 2011.

The Court of Appeal's Remand Order states that the Board has agreed to reopen the declaratory order proceeding and to "consider [Buncher's] new evidence and jurisdictional argument." In this Brief, therefore, Buncher sets forth both its argument that the Board does not have jurisdiction under the decision of the United States Court of Appeals for the District of Columbia Circuit in Consolidated Rail Corporation v. Surface Transportation Board, 571 F.3d 13 (D.C. Cir. 2009) (Harsimus), and its argument that the additional evidence confirms that if any line of railroad did once cross Buncher's property, it has been abandoned.

II. Summary of Argument

The decision of the United States Court of Appeals for the District of Columbia Circuit in Harsimus dictates the outcome of this case. Harsimus made clear that where a petition raises questions as to what was originally transferred to Conrail, exclusive jurisdiction rests with the Special Court established by the Regional Rail Reorganization Act of 1973 ("Rail Act") to interpret the orders and conveyances that created Conrail. By asserting that AVRR had acquired a rail easement from Conrail that was not a spur or industrial track and that was part of one of two alleged lines of railroad acquired by Conrail in the same area, AVRR's Petition necessarily implicated consideration of what Conrail had originally received, which in turn necessarily

required consideration of the original Conrail conveyance documents and the Final System Plan ("FSP").

Further, as a matter of statutory law, if the nature and status of the track as originally conveyed to Conrail was a spur or industrial track rather than a through line of railroad, the Board is also without jurisdiction. The evidence of record submitted by AVRR does not prove that any track that existed on Buncher's property between 16th and 21st Streets had been part of a through line of railroad as owned and operated by Conrail. Nevertheless, as Harsimus holds, that question requires consideration of the Conrail acquisition documents on this subject. Additionally, AVRR argued that the February 1984 abandonment application filed by Conrail could be ignored because Conrail had been conveyed two separate lines of railroad in this area and the abandonment application applied to a line of railroad along Smallman Street and not on Buncher's property. That argument by AVRR directly raised an issue of whether Conrail had received two separate lines of railroad in this area between 16th and 21st Streets in the original conveyance documents. For this additional reason, the FSP and original conveyances need to be considered and interpreted to determine either the status of the track or whether Conrail ever acquired two separate lines of railroad in this area. That places jurisdiction of this matter squarely before the Special Court rather than the STB.

Finally, the Board must review and reconsider this matter in light of the additional evidence submitted by Buncher. That evidence demonstrates why the decision in Harsimus is not just an academic declaration regarding statutory jurisdictional allocations, but has important practical consequences that reinforce the soundness of the ruling that the respective rights and interests of parties succeeding to Conrail must be determined through a careful and detailed examination of what was originally conveyed to Conrail by the Special Court with statutory

authority to do that. The additional evidence also directly exposes, as false, the entire basis of AVRR's argument that the 1984 Conrail abandonment application previously submitted into evidence by Buncher in this proceeding applied to Smallman Street track, not Buncher's property. The new evidence adduced before the D.C. Circuit and attached hereto shows that Conrail filed separate abandonment applications in the same time period for track in Smallman Street. This demonstrates that the February 1984 abandonment application originally introduced by Buncher did not apply to trackage on Smallman Street and that any line of railroad on Buncher's property had been abandoned.

If the Board does reach the merits, it should also reject AVRR's earlier argument that because a consummation letter from Conrail cannot be located, the February 1984 abandonment application is ineffective and can be ignored. The Order of the Interstate Commerce Commission granting the abandonment in 1984 was not conditional and therefore ended all agency jurisdiction. Moreover, AVRR's argument, if accepted, is nonsensical since it would mean that any easement it holds is entirely ephemeral, subject to extinguishment if a letter is found or filed. Finally, it is AVRR's burden to show that an easement still exists in the face of the abandonment application and order that clearly applies to the area in question. AVRR has failed to meet this burden.

III. Statement Of Facts

For the benefit of the Board, and because Buncher's last written submission to this Board on the merits was in June 2009, almost 2 years ago, Buncher includes in this Brief a full statement of the relevant facts and summary of the evidence, both as previously submitted and as supplemented by the additional evidence.

A. Regional Rail Reorganization Act of 1973 and the Formation of Conrail

Both Buncher and AVRR own properties that were acquired from Conrail, the railroad conglomerate that was formed under Congressional authorization in the mid-1970's from several bankrupt railroads. By the late 1960's and early 1970's, eight major railroads in the northeast and mid-west region of the United States had commenced reorganization proceedings under the Bankruptcy Act. Congress responded by enacting the Regional Rail Reorganization Act of 1973, Pub. L. No. 93-236, 87 Stat. 985 (1974) (codified as amended at 45 U.S.C. §§ 701 et. seq.) ("3R Act"). The purpose of the 3R Act was to accomplish a "reorganization of the railroads, stripped of excess facilities, into a single, viable system operated by a private, for-profit corporation." Blanchette v. Conn. Gen. Ins. Corps., 419 U.S. 102, 109 (1974). The 3R Act established the United States Railway Association ("USRA") and formed Conrail to own and operate the reorganized railroad system. Acting pursuant to its statutory mandate, in July 1975, the USRA published its FSP designating which "rail properties" from all those previously owned by the railroads involved in the reorganization were to be transferred to Conrail. See Harsimus, 571 F.3d at 15.

The FSP was developed through a series of proposals, known as Preliminary System Plans, that were published for public comment. The purpose of the FSP was to distinguish those "rail properties" that were required or necessary for operation (and therefore recommended for

transfer to Conrail) from those that were excess and not required to be transferred to Conrail. Based on that assessment, the FSP designated certain "rail lines and trackage rights" for transfer to Conrail. See FSP at 261 (Buncher's Response dated June 25, 2009, Ex. B., p. 10).¹ Unless otherwise specified in the FSP, the transfer of a rail line to Conrail included all rail properties connected with, controlling or in any way pertaining to or used or usable in connection with the rail line, including connecting, spur and storage tracks. See Harsimus, 571 F.3d at 15. Among the rail lines included in the FSP for transfer to Conrail was "Line Code 2229" which, as explained below, is the common source of Conrail's title to what was later transferred to, respectively, Buncher and AVR. FSP at 274 (Buncher's Response dated June 25, 2009, Ex. B., p. 17).

The 3R Act also created a "Special Court," a United States District Court composed of three federal judges selected by the Judicial Panel on Multi-District Litigation.² In March 1976, the Special Court ordered the Trustee or Trustees of each railroad involved in the bankruptcy reorganizations to convey to Conrail the rail properties that were designated for transfer in the FSP. This was known as the "Conveyance Order" and was dated March 25, 1976.

Acting pursuant to the Conveyance Order, the Trustees of Penn Central Transportation Company ("Penn Central") transferred certain rail properties designated by the FSP to Conrail.

¹ The term "rail line" (sometimes also referred to as a "line of railroad") must be distinguished from the term "track", which may or may not form part of a "rail line". Under the Interstate Commerce Act (as it has been amended over the years), a railroad is required to obtain regulatory approval to acquire, construct, operate and abandon any "rail line" or "line of railroad." However, under 49 U.S.C. § 10906, the Board does not have jurisdiction over the acquisition, construction, operation or abandonment of ancillary yard, industrial, spur, switching or side track.

² In 1997, Congress transferred the exclusive jurisdiction of the Special Court to the United States District Court for the District of Columbia, 45 U.S.C. § 719(b)(2), and the functions of the Special Court are now performed by that Court. See City of Jersey City v. Consol. Rail Corp., ___ F. Supp. 2d ___, 2010 WL 3833037 (D.D.C. Sept. 28, 2010).

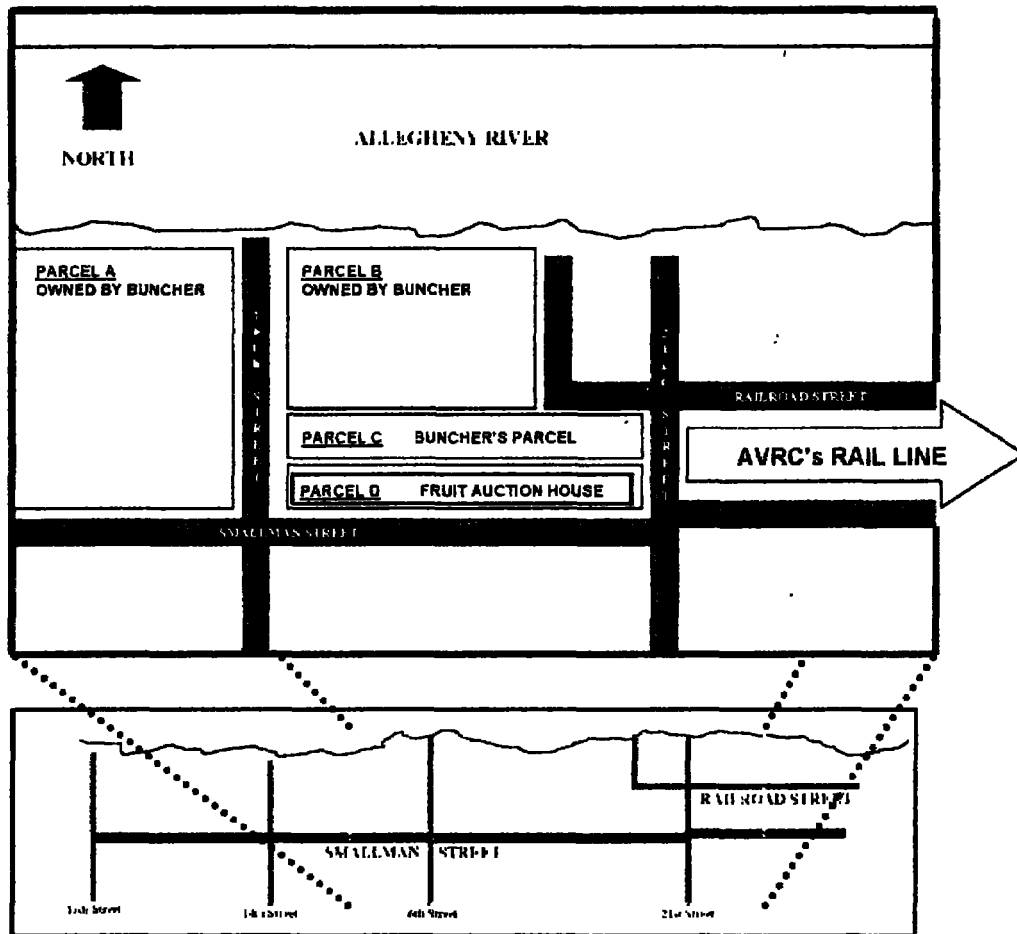
By Deed dated September 12, 1976 recorded in the Recorder's Office of Allegheny County, Pennsylvania at Deed Book Volume 6001, Page 591, the Penn Central Trustees conveyed rail properties to Conrail including the line of railroad "identified as Line Code 2229 in the records of the United States Railway Association." Deed Book Volume 6001, Page 606 (Buncher's Response dated June 25, 2009, Ex. C., p. 6). In accordance with the FSP, certain former Penn Central properties that were designated as excess were retained by the Penn Central Trustees. These retained properties were later transferred to others (including in some cases to Buncher). As explained below, Conrail also transferred some of the properties and parcels it acquired in 1976 to others, including the parcel involved in this appeal to Buncher.

B. The Relevant Parcels

By its Petition, AVRR requested a determination that it holds a continuing permanent easement for a common carrier rail line over a parcel of land with no existing track that Buncher acquired from Conrail. AVRR filed the Petition, it said, "to establish that it continues to own and has the right to provide common carrier rail service over the 90 by 1541.56 foot right of way between 16th and 21st Streets." (AVRR's Petition dated April 16, 2009). The parcel in question where AVRR asserted an easement is one of several properties owned by Buncher in the Strip District currently used for commercial purposes and parking.

In the first half of the 20th Century, the Strip District was a market area used for the transportation and re-delivery of fruit, vegetables and produce. To accommodate rail traffic, the area was improved with a "spaghetti" of railroad tracks. (See Buncher's Reply dated June 2, 2009, Ex. A). Eventually, as transportation by truck increased in the 1950's and 1960's, use of rail transportation decreased and, in the 1970's, the various parcels and remaining railroad properties became part of the Penn Central bankruptcy and were then either conveyed to Conrail

or retained by the Penn Central trustees as part of the Final System Plan. As a result, the area is a patchwork of parcels, some of which were conveyed to Conrail and some of which were not. To assist in the understanding of the various parcels involved, Buncher includes the following drawing depicting the relevant area and parcels.



Parcel A is a parcel located to the west of 10th Street and is part of a larger area that was not recommended for transfer in the Final System Plan. It was not conveyed to Conrail but was retained by the Penn Central Trustees and then transferred to Buncher in 1978.

Parcel B is a parcel located between Parcel C and the Allegheny River. Under the final system Plan, it was retained by the Penn Central Trustees and not transferred to Conrail. It was conveyed to Buncher by the Penn Central Trustees in 1978.

Parcel C is the parcel owned by Buncher over which AVRR asserted in this case the right to a title easement before the SUEB. This parcel was included in the Final System Plan and transferred to Conrail by the original conveyance documents in 1976. It was acquired by Buncher from Conrail in 1983. At the time of that acquisition, three side tracks known as Track No. 6, Track No. 7, and Track No. 8 (also "Valley Industrial Track") were located on this property. All three tracks were removed shortly thereafter.

Parcel D is a parcel to the south of Parcel C. In the late 1920's and early 1930's, Parcel D was improved with a Fruit Auction House that runs from 10th Street to 21st Street and is still there today. This parcel was recommended for transfer under the Final System Plan and was conveyed to Conrail by original conveyance documents; it was then transferred by Conrail to the Urban Redevelopment Authority of Pittsburgh in 1981, which still owns the parcel.

AVRR's Rail Line is the rail line acquired by AVRR from Conrail in 1995. Its present terminus is on the east side of 21st Street and from there, the rail line extends east.

The specific area where AVRR claims its rail easement over Buncher's property is the parcel designated as "Parcel C" above. Buncher acquired the parcel from Conrail in 1983. By Deed dated July 20, 1983 ("1983 Deed"), Conrail transferred to Buncher an area of land approximately 90 feet wide between 16th Street and 21st Street. (AVRR Petition, Ex. A). The land conveyed was shown on a survey prepared in 1983 that is referenced in the 1983 Deed. (AVRR Petition, Ex. A). The 1983 Deed recited that the parcel was "a part of the premises which the Trustees of the Penn Central Transportation Company, Debtor, by Conveyance Document No. PC-CRC-Rp-173 dated March 30, 1976 and recorded in Allegheny County, Pennsylvania in Deed Book Volume 6001 at Page 591, granted and conveyed unto Consolidated Rail Corporation." (AVRR Petition, Ex. A). The Deed also transferred then existing railroad track to Buncher, specifically, "all the right, title and interest of the said Grantor of, in and to 3,000 lineal feet of railroad track and appurtenances thereto, being Track No. 6 and Track No. 7, located on the above described premises." (AVRR Petition, Ex. A).

The 1983 Deed reserved to Conrail "the permanent right and easement to continue to operate over and maintain its so-called Valley Industrial Track which traverses the land hereinbefore described" (AVRR Petition, Ex. A). At the time of the 1983 Deed, three tracks were located on the land transferred to Buncher: Tracks Nos. 6 and 7 (the tracks transferred to Buncher) and the Valley Industrial Track, for which an easement was reserved by Conrail.

In February 1984, Conrail filed an application with the Interstate Commerce Commission (“ICC”)³ under the 3R Act for abandonment of the Fort Wayne Connecting Track and the “Valley Industrial Track”. (Buncher Reply, Ex. F) (the “February 1984 Abandonment Application”). The February 1984 Abandonment Application was granted by certificate dated May 14, 1984 (Buncher Reply dated June 2, 2009, Ex. G). Following the February 1984 Abandonment Application, all railroad tracks on the Parcel C property conveyed to Buncher in 1983 – Track 6, Track 7 and the Valley Industrial Track – were removed. (Verified Statement of J. Jackovic dated June 2, 2009, p. 2).

Eleven years later, in 1995, Conrail conveyed by Quitclaim Deed to AVRR certain “strips or parcels of land known as the Valley Cluster,” as “generally described” in an Exhibit “A” to the Quitclaim Deed and “generally indicated” by “PS” on drawings attached to the Quitclaim Deed (the “1995 AVRR Deed”). (AVRR Petition, Ex. B1). The 1995 AVRR Deed transferred to AVRR its existing railroad line beginning on the east side of 21st Street and extending in a northeasterly direction along the Allegheny River for approximately 22.65 miles. The Exhibit “A” to the 1995 AVRR Deed describes the property conveyed as “being a portion of the line of railroad known as the Allegheny Branch (a.k.a. the Valley Industrial Track and the Coleman Secondary) and identified as Line Code 2229 in the Records Office of Allegheny County, Pennsylvania in Deed Book Volume 6001 at Page 606,” the original Conrail conveyance document from the Penn Central Trustees that implemented the FSP. (AVRR Petition, Ex. B1).

The 1995 AVRR Deed then states that AVRR received the aforementioned line of railroad “TOGETHER with Grantor’s right, title and interest in and to the easement to operate

³ Under the ICC Termination Act of 1995 (“ICCTA”), Pub. L. No. 104-88, 109 Stat. 803 (1995), the ICC was abolished and its rail regulatory functions were transferred to the Board, effective January 1, 1996.

over and maintain the Valley Industrial Track” and makes reference to “said right and easement reserved in a July 20, 1983 deed from Grantor to The Buncher Company and is recited as follows.” (AVRR Petition, Ex. B1). What “follows” in the 1995 Deed, however, is not a recitation of the same description that appeared in the 1983 Deed with Buncher. Rather, the 1995 Deed quotes language and a description from a different, later 1987 Deed from Conrail to Buncher (“1987 Deed”) relating to other property located in another area more than 20 blocks to the east at 43rd Street and in which Conrail had reserved a different easement. (AVRR Petition, Ex. B1). In November 2008, twelve years after the 1995 conveyance to AVRR and just before AVRR filed its Petition with the Board, AVRR recorded a “Corrective” Deed that inserted, as its only change, additional language in the Deed’s description between the reference to the 1983 Deed and the incorrect recitation from the 1987 Deed (AVRR Petition, Ex. B2) (the “2008 Corrective Deed”). The 2008 “Corrective” Deed added a recitation quote from the 1983 Deed and a reference to the 1987 Deed. (See language in BOLD, AVRR Petition, Ex. B2).

C. The Parties’ Prior Submissions and Positions Before the Board

At the time of the 1995 AVRR Deed, there were no tracks remaining on Parcel “C” (the Buncher parcel), and all trackage terminated on the east side of 21st Street. AVRR asserted in its Petition, though, that in addition to the tracks and associated rights it had acquired from Conrail to the east of 21st Street, Conrail had quitclaimed to it an easement that extended west from 21st Street onto Buncher’s property. AVRR’s Petition did not mention the February 1984 Abandonment Application. Instead, its Petition asserted that the alleged “permanent rail easement has never been abandoned under the provisions of 49 U.S.C. § 10903.” (AVRR Petition at p. 6).

In a Reply to the Petition, Buncher identified the February 1984 Abandonment Application and the certificate issued by the ICC on May 18, 1984 authorizing abandonment of the Valley Industrial Track in the area that included 16th Street to 21st Street. (Buncher Reply dated June 2, 2009 at p. 3). Buncher requested the Board to issue an order "confirming that the parcel of land formerly occupied by the Valley Industrial Track between 16th Street and 21st Street is not a 'line of railroad' subject to the Board's jurisdiction." (Buncher Reply dated June 2, 2009 at p. 4).

In a Rebuttal to Buncher's Reply, AVRR contended that the February 1984 Abandonment Application did not apply to the area within Buncher's property identified as Parcel C, but instead applied to a different line of railroad, located in Smallman Street, a street just south of Buncher's property which line of railroad, according to AVRR, was also known as the "Valley Industrial Track." (AVRR's Rebuttal dated June 11, 2009 at p.2).

Buncher disputed that account of the February 1984 Abandonment Application and in a Response dated June 25, 2009 to AVRR's Rebuttal pointed out that AVRR was now claiming, for the first time, "without independent corroboration that Conrail operated over two separate, parallel 'lines of railroad' in the same one-block area bounded by 16th and 21st Streets in the Strip District," both of which, AVRR contended, were called the "Valley Industrial Track." (Buncher Response dated June 25, 2009 at p. 1). Buncher noted the illogic of using the same reference to apply to different areas of track and pointed out that the same term, "Valley Industrial Track," was used by Conrail in both the 1983 Deed to Buncher and in the February 1984 Abandonment Application that Conrail filed in sequence. Buncher also argued that AVRR's "new theory" of two through lines of railroad in this same area was inconsistent with the FSP and the original

conveyance of a single line of railroad in this area to Conrail (i.e., Line Code 2229). (Buncher Response at p. 1)

AVRR filed an opposition to Buncher's Motion for Leave to Submit its Response in which AVRR disputed Buncher's right to file any response as not permitted by Board rules. (See AVRR's Reply dated July 15, 2009 at p. 3). AVRR included a lengthy Verified Statement from its President, Russell A. Peterson, that opined that Conrail had owned two separate lines of railroad in this area, came to call both lines the Valley Industrial Track and the February 1984 Abandonment Application purportedly applied to track in Smallman Street, not track on Buncher's property (Parcel C) near Railroad Street. (Verified Statement of Russell A. Peterson attached to AVRR's Reply dated July 15, 2009).

In support of its "2-line theory," AVRR's Verified Statement offered its own account of the history of the railroads in this area. Much of the "history" included in the Verified Statement related to periods from the mid-1850's forward but before the 1970's railroad bankruptcies and the original conveyances to Conrail in 1976. (See Verified Statement of Russell A. Peterson attached to AVRR Reply dated July 15, 2009). The theory of the Verified Statement was that, at one time, there were two through lines of railroad, one on Smallman Street and one that traversed from Smallman Street to Railroad Street between 16th Street and 21st Street. AVRR's Verified Statement contended that this second line of railroad continued east along Railroad Street and reconnected with the line along Smallman Street at 29th Street, until the Fruit Auction House was constructed adjacent to Smallman Street between 16th Street and 21st Street in the 1920's and 1930's and, once built, blocked any rail from traversing from Smallman Street to Railroad Street. (Verified Statement of Russell A. Peterson attached to AVRR Reply dated July 15, 2009). (The Fruit Auction House is marked as "Parcel D" in the drawing on page 10 above; the building is

still there today). Once the Fruit Auction House was built, AVRR contended, the line of railroad that once traversed from 16th Street to 21st Street across what is now Buncher's property was "rerouted" through a "Running Track" within the "spaghetti" of track in the area. (Verified Statement of Russell A. Peterson attached to Reply dated July 15, 2009, at pp. 9-10). These alternative tracks were located to the north, in the areas identified as "Parcels A and B" in the drawing on page 10 above. AVRR's "theory" that the February 1984 Abandonment Application did not apply to Parcel C of Buncher's property was based on the premise that there were two through lines of railroad, that both were conveyed to Conrail by the FSP and original conveyance documents, that both thereafter came to be called the "Valley Industrial Track" by Conrail, and that the February 1984 Abandonment Application applied to one but not the other.

AVRR's Verified Statement detailing its "2-line" theory was filed with its July 15, 2009 pleading that requested the Board to strike Buncher's previous filing as not permitted by Board rules. The Board did not immediately rule to either strike Buncher's pleading or accept AVRR's Reply and Verified Statement. By its Decision, which was issued nearly a year later in June 2010, the Board announced it would accept each parties' last submissions to "provide a more complete understanding of a complicated situation." (Decision at p. 6). As a result, the Board never requested or received a response from Buncher to AVRR's last Verified Statement.

The Board did request separate briefing from the parties on this Court's decision in Harsimus. (Decision dated September 15, 2009). In response, Buncher pointed out that AVRR's argument with respect to the February 1984 Abandonment Application "is premised on an issue that is with the exclusive jurisdiction of the [Special] Court – i.e., whether the Penn Central Trustees conveyed two separate 'lines of railroad' both between 16th and 21st Streets in the Strip District to Conrail pursuant to the FSP, the Conveyance Order and the 1976 Deed." (Buncher's

Response to Request for Additional Briefing dated October 9, 2009). AVRR argued that Harsimus was inapplicable, “should be accorded little precedential weight” (Response of AVRR dated October 8, 2009 at p. 11) and urged the Board to resolve the matter without making any interpretation of the FSP and original conveyance documents (Response of AVRR dated October 8, 2009 at p. 3).

D. The Board’s Earlier Decision

In its earlier Decision on the merits served June 15, 2010, the Board said: “We find that there were 2 lines running through the Strip District and that the line over Buncher’s property was not the one subject to the 1984 abandonment . . . certificate.” (Decision at p. 6). In making that determination, the Board concluded: “We do not need to interpret the FSP for the conveyance of property to Conrail to reach this conclusion.” (Id.). On that basis, the Board found that the D.C. Circuit’s ruling in Harsimus was not applicable.

As support for its adoption of the “2 line” theory, the Board relied very heavily on the lengthy historical Verified Statement of AVRR’s President submitted with its Reply dated July 15, 2009.⁴ The Board noted that AVRR “submits a number of maps in support of its position” (Decision at p. 4), but the Board placed particular reliance on a “1919 PRR Map” that was attached as Exhibit BB to the Affidavit of AVRR’s President submitted with its July 15, 2009 Reply. (“PRR” refers to the Pennsylvania Railroad which operated in the area in the early 1900’s). The map (AVRR Reply dated July 15, 2009, Ex. BB) is actually dated “June 30, 1918.” According to the AVRR Affidavit, the “1919 PRR Map” showed a line in Smallman Street

⁴ This is the July 15, 2009 Reply submitted by AVRR in opposition to Buncher’s Request for Leave to Submit its Response. As noted, in its Decision a year later, the Board ruled it would accept the parties’ submissions leaving AVRR’s lengthy historical Verified Statement as the last word without a response from Buncher.

identified as "Present ¶ PRR Conemaugh Div." and a line that traversed from Smallman Street to Railroad Street between 16th Street and 18th Street identified as "Original ¶ P.R.R. Conemaugh Div."⁵

The Board's Decision also relied on two other circumstances to support its acceptance of the 2-line theory. One, the Board pointed to a 1972 abandonment application filed by the Penn Central Trustees (before the creation of Conrail) to abandon a section of the "Allegheny Branch" between 12th Street and 14th Street. (Decision at p. 8) ("1972 Abandonment Application"). The Board reasoned that this 1972 Abandonment Application supported the existence of 2 separate lines of railroad in this area because the later February 1984 Abandonment Application filed by Conrail sought abandonment between 11th Street and 21st Street and, if there were only one line in this area, the Conrail application would be redundant because it encompassed 12th through 14th Streets and would in the Board's view, be "irrational" and "nonsensical." (Decision at p. 8).

The Board's Decision also found "Conrail's actions telling." (Decision at p. 9). Pointing to the 1995 Quitclaim Deed by which Conrail transferred the Railroad Street line to AVRR in 1995, the Board interpreted the Quitclaim Deed to provide direct evidence of Conrail's view of the state of title and concluded that "Conrail believed that it had an active interest there to sell" (id.) because the Quitclaim Deed included a reference to the rail easement in question.

The Board rejected Buncher's contention that the segment of track in question was a spur, yard, switching or industrial track that is outside the Board's jurisdictional authority. The Board noted that switching was apparently performed on the track in the late 1970's (Decision at p. 9).

⁵ See Ex. BB to AVRR Reply of July 15, 2009. For orientation, the "Original ¶ P.R.R. Conemaugh Div." track shown on the "1919 PRR Map" would have passed through a part of "Parcels C and D" on the drawing in the brief above at page 10 until passage was blocked when the Fruit Auction House was constructed in the 1920's and 1930's on what is identified as "Parcel D."

Nevertheless, the Board decided (without explanation) that the segment was a line of railroad before it was acquired by Conrail in the 1970's, that Conrail's 1976 acquisition did not change the status of the segment absent agency approval and that Conrail had not sought any authority to abandon the line. The Board concluded: "Given this record, no interpretation of the FSP is needed to resolve the matter before us," again concluding that the D.C. Circuit's decision in Harsimus was not applicable. (Decision at p. 9).

Finally, the Board rejected Buncher's argument that any extant rights were abandoned because that track in question was physically removed and had not been in place for more than 20 years. On the basis of the foregoing analysis, the Board found that AVRR possessed an active easement across Buncher's property that remains available as a line of railroad and that AVRR can reconstruct track on and operate over Buncher's property at will.⁶

E. The Additional Evidence

To prove that it had acquired an active easement from Conrail for a line of railroad on Buncher's property, AVRR had to show that any line located on Buncher's property was not abandoned. Buncher argued that any rail easement had been abandoned by the February 1984 Abandonment Application. The February 1984 Abandonment Application requested abandonment of the "Valley Industrial Track", the same reference Conrail had used when it reserved the easement in an earlier 1983 Deed that transferred the property to Buncher. AVRR argued that the February 1984 Abandonment Application did not apply to Buncher's property. The basis for that argument was the 2-line theory AVRR offered late in the proceedings that Conrail had owned 2 lines of railroad in the relevant area, that both had come to be called the

⁶ The Board held that any dispute between the parties as to the location, width and conditions of any easement was a question of state law better addressed by a Pennsylvania state court. (Decision at p. 9).

“Valley Industrial Track” and that the February 1984 Abandonment Application did not apply to any line of railroad on Buncher’s property but instead it applied to another line of railroad located one block away in Smallman Street.

Prior to its receipt of the Board’s Decision, Buncher had not looked for Conrail abandonment applications in Smallman Street since Buncher had already provided the STB with the February 1984 Abandonment Application, which it said applied to the area within its property. Buncher had no indication that the STB would accept the 2-line theory or would conclude the February 1984 Abandonment Application (which does not mention “Smallman Street”) applied to a line of railroad in Smallman Street instead of Buncher’s property.

Subsequent to the Decision and the filing of its Petition for Review with the Court of Appeals, Buncher searched for additional information about Conrail abandonments, and specifically information about abandonments in the vicinity of Smallman Street. It did so because it thought that AVRR’s 2-line theory was wrong, but also because Buncher realized that if it turned out that the February 1984 Abandonment Application did apply to Smallman Street, there would be no reason for Buncher to pursue its argument that the STB lacked jurisdiction and ask for a transfer of the matter to the Special Court if the outcome there would be the same.

As a result of its further searches, Buncher received the additional information that was the subject of its Motion to Adduce Additional Evidence submitted to the Court of Appeals. The additional information consists of three other abandonment applications that Conrail filed with the ICC in May and June 1984, a few months after the February 1984 Abandonment Application (the “Additional Evidence”). Copies of the three additional abandonment applications are attached to the Affidavit of Joseph M. Jackovic attached hereto. As filed with the ICC, the applications were captioned as follows (emphasis added):

a. EXHIBIT A

Application of Consolidated Rail Corporation Pursuant to Section 308(c) of the Regional Rail Reorganization Act of 1973, as Amended by Section 1156 of the Northeast Rail Service Act of 1981, for **Approval of the Abandonment of a Portion of the Smallman Street Track** in Allegheny County, Pennsylvania, Dated May 23, 1984. Docket No. AB-167 (Sub-No. 571N);

b. EXHIBIT B

Application of Consolidated Rail Corporation Pursuant to Section 308(c) of the Regional Rail Reorganization Act of 1973, as Amended by Section 1156 of the Northeast Rail Service Act of 1981, for **Approval of the Abandonment of a Portion of the Smallman Street Track** in Allegheny County, Pennsylvania, Dated May 23, 1984. Docket No. AB-167 (Sub-No. 572N);

c. EXHIBIT C

Application of Consolidated Rail Corporation Pursuant to Section 308(c) of the Regional Rail Reorganization Act of 1973, as Amended by Section 1156 of the Northeast Rail Service Act of 1981, for **Approval of the Abandonment of the Smallman Street Branch** in Allegheny County, Pennsylvania, Dated June 8, 1984. Docket No. AB-167 (Sub-No. 641N).

Each of these additional abandonment applications specifically requests approval for abandonment of track in "Smallman Street" ("Smallman Street Abandonment Applications"). As such, the applications seek abandonment of the line of railroad that AVRR had argued was abandoned by the previously filed February 1984 Abandonment Application that had referred to the "Valley Industrial Track."

The February 1984 Abandonment Application had requested abandonment of the "Valley Industrial Track from its connection with the Fort Wayne Connecting Track in Pittsburgh (approximately Milepost 0.0) to the north side of 21st Street (approximately Milepost 0.66)." AVRR had argued that the February 1984 Abandonment Application applied to a line of railroad located in Smallman Street within those Mileposts. The later filed Smallman Street Abandonment Applications, however, are directly contrary to AVRR's argument because they

are applications that covered abandonment of track in Smallman Street between Mileposts 0.0 and Milepost 0.85., i.e., the same area.⁷

These separate abandonment applications would not have been necessary if the earlier February 1984 Abandonment Application had in fact already abandoned the lines in Smallman Street, as AVRR's "2-line theory" surmised. The later abandonment applications also show that Conrail did not, when filing abandonment applications, refer to the track in Smallman Street as the "Valley Industrial Track", a suggestion made by AVRR to prop up its 2-line theory. The Smallman Street Abandonment Applications, therefore, are directly contrary to the conclusions that were proffered by AVRR about the February 1984 Abandonment Application.

IV. Argument

A. Harsimus Dictates That Jurisdiction Over This Matter Is With The Special Court, Not The Board

The disposition of this case is controlled by the decision in Harsimus. For the same reasons that were discussed in that decision, the Board lacks jurisdiction over AVRR's Petition in this case. Harsimus addressed the interplay between the jurisdiction of the Board and the exclusive jurisdiction of the Special Court established by statute to interpret the orders and conveyances that created Conrail. The Special Court that was created by the Regional Rail Reorganization Act of 1973, Pub. L. No. 93-236, 87 Stat. 985 (1974) (codified as amended at 45 U.S.C. § 701 et seq.) ("3R Act"), was given "original and exclusive jurisdiction" "to interpret, alter, amend, modify, or implement any of the orders entered by such court pursuant to Section

⁷ The later filed Abandonment Applications covered a "portion of the Smallman Street Track in Pittsburgh from a point (approximately Milepost 0.0) east of 11th street to a point (approximately Milepost 0.3) east of 14th Street" (Exhibit A hereto); and the "Smallman Street Branch in Pittsburgh from a point east of 14th Street (approximately Milepost 0.3) to a point east of 24th street (approximately Milepost 0.85)." (Exhibit C hereto).

743(b) of this title in order to effect the purposes or the goals of the final system plan.” 45 U.S.C. § 719(e)(2). For the reasons discussed below, AVRR’s Petition cannot be ruled on without an interpretation of the original Conrail conveyance documents.

In Harsimus, a petition was filed with the Board asserting that certain rail properties sold by Conrail to a private real estate developer were still active lines of railroad because Conrail had not obtained authorization to abandon the lines from the Board. The key inquiry in that case was whether property as transferred originally to Conrail (and then by Conrail to the developer) was a line of railroad or was ancillary spur and yard track: if it was a line of railroad, abandonment authority from the Board was required; if it was a spur or yard track, the Board was by statute, 49 U.S.C. § 10906, without authority over the matter and no authorization for abandonment was required.

The parties in Harsimus did not dispute that the FSP had designated the property in question for transfer to Conrail and that it had in fact been conveyed to Conrail by the original Conveyance Orders. The Court concluded, however, that because the determination of the status of the track raised an issue of the “nature” of the conveyance to Conrail, the petition “raises substantial questions with respect to the interpretation of the FSP and [the Special Court’s] conveyance orders themselves”, 571 F.3d at 19 (citation omitted). The matter therefore fell within the “original and exclusive jurisdiction” of the United States District Court for the District of Columbia, the successor to the Special Court, and the Board had no jurisdiction.

The ruling in Harsimus is implicated in the present case in two ways. First, in the same way it arose in Harsimus, AVRR’s Petition raised an issue as to whether the easement it claimed asserted a right over a through line of railroad or ancillary track (such as spur or yard track). Harsimus says that issue of the “status” of particular track conveyed to Conrail requires

examination of the FSP and original Conrail conveyance documents and the Special Court has exclusive jurisdiction. Harsimus also held, however, that whether trackage was even conveyed to Conrail is likewise subject to the exclusive jurisdiction of the Special Court. This issue arose in the present case when AVRR argued that Conrail had acquired two lines of railroad in this area, an occurrence that can only be confirmed by examining and assessing the original Conrail conveyance documents.

Thus, the same “status of track” issue addressed by the Court in Harsimus is present here. AVRR’s Petition directly raised whether the former track over which it asserts an easement – *i.e.*, Track No. 8 or the Valley Industrial Track – was part of a through line of railroad or ancillary track not subject to Board jurisdiction. AVRR’s Petition contended that it had a continuing permanent easement over Buncher’s property because Conrail had reserved an easement in its conveyance to Buncher for “the so-called Valley Industrial Track.” (AVRR’s Petition at p. 4). AVRR’s Petition alleged that Conrail had never abandoned the track and later conveyed the easement by Quitclaim Deed to AVRR. Just as in Harsimus, if the track was part of a “railroad line,” as AVRR contended, it could only be abandoned by formal application and remained subject to the abandonment authority of the Board. If the track was not a “railroad line” but rather a spur, industrial, switching or side track, as Buncher contended, then it was not within the Board’s jurisdiction and, importantly, could be abandoned by Conrail without formal authority from the Board. See 49 U.S.C. § 10906; City of Jersey City v. Consol. Rail Corp., ___ F. Supp. 2d ___, 2010 WL 3833037 (D.D.C. Sept. 28, 2010) (“No authorization is required . . . for abandonment of ‘spur, industrial, team, switching, or side tracks.’”)

No less than in Harsimus, the determination of the nature of the track at issue here requires an analysis and interpretation of what Conrail received in its original conveyances and

the “nature” of the conveyance as to this particular track. That inquiry requires interpretation of the FSP and conveyance orders and is within the exclusive jurisdiction of the district court qua the Special Court. The fact that there is a dispute in this case between AVRR and Buncher as to the nature and status of the track means, under Harsimus, that the Board is without jurisdiction to consider the Petition and for that reason alone the Board’s earlier Decision must be reversed. See Norfolk Southern Railway Co. Petition for Exemption—in Baltimore City and Baltimore County, Md., Docket No. AB 290 (Sub-No. 311X), 2010 WL 17BL361 (Board served May 4, 2010) (“We cannot resolve a substantial question related to the nature of the track transferred in the FSP”) (citing Harsimus).

Harsimus commits this case to the exclusive jurisdiction of the Special Court in another more fundamental way. Buncher pointed to the February 1984 Abandonment Application filed by Conrail that abandoned the “Valley Industrial Track,” which was the same reference used by Conrail in the easement reserved in the 1983 Deed with Buncher. The clear effect of the February 1984 Abandonment Application and the subsequent ICC certificate was that the easement rights reserved by Conrail in the 1983 Deed had been formally abandoned by Conrail. To counteract the clear consequences of that abandonment, AVRR proposed to the Board its “2-line” theory, which was constructed on the following contentions: 1) that there were at one time 2 through lines of railroad in this area; 2) that both became known and referred to by Conrail as the “Valley Industrial Track”; and 3) that while one Valley Industrial Track was reserved as an easement by Conrail in the 1983 Deed with Buncher, it was the other Valley Industrial Track that was the subject of the Abandonment Application in February 1984. That theory has jurisdictional implications.

To validate the 2-rail line theory, AVRR relied, primarily, on an old map – the 1919 PRR map – which it says showed the presence of 2 lines of railroad between 16th and 21st Streets. The 2-line theory raises, however, whether 2 through lines of railroad were conveyed to Conrail by the FSP and the original conveyance orders. As Buncher pointed out, the FSP and the original 1976 deed to Conrail identify only one line of railroad in this area, *i.e.*, Line Code 2229. (Buncher's Response dated June 25, 2009 at p. 8). The need to consider the FSP and the Original Conveyance documents arises because AVRR's "2-line" theory only completes the chain of conveyances necessary to connect the historical existence of 2 lines to the 1995 transfer to AVRR if it is first determined that Conrail itself was in fact conveyed 2 through lines of railroad in this area in 1976. By focusing on the 1919 Map, AVRR's argument jumps from 1919 to 1995 ignoring critical intervening events regarding Conrail's formation, property and common carrier rights. As a result, however, there is a failure to answer an essential question: even if there were 2 through lines of railroad at one time historically, were the 2 through lines of railroad in fact conveyed to Conrail?⁸ That question cannot be skipped over since the answer to the question is essential in order to conclude that Conrail acquired, retained, did not abandon and then conveyed by quitclaim to AVRR a valid, continuing easement for a through line of railroad on the Buncher property. That question, moreover, can only be answered by reviewing and interpreting the FSP and original conveyance orders, a matter committed by statute and by the

⁸ This question becomes compelling when it is considered that the purpose of the FSP was to distinguish between "rail properties" necessary for operation and those that were unnecessary excess properties. It is certainly not obvious why Conrail, in the 1970's when truck transportation had largely displaced rail transportation in the Strip District, would need 2 through lines of railroad in the same small area between 16th and 21st Streets considering the alleged "2 lines" would have shared the same locus (Smallman Street) for some distance and would have been less than a block apart for a short distance. The fact that the answer to this question requires interpretation of the FSP puts it beyond the Board's jurisdiction.

D.C. Circuit's decision in Harsimus to the exclusive jurisdiction of the district court qua Special Court.

In Harsimus, the Board argued to the Court of Appeals that ascertaining the status of track was an "implicit part" of every abandonment proceeding and it would be difficult for the Board to discharge its responsibilities if questions of track status were handled exclusively by the Special Court. See Harsimus, 571 F.3d at 19. The Court rejected that argument, finding no conflict between the Board's statutory authority under 49 U.S.C. §§ 10903 and 10906 to address the abandonment of rail lines but not spur, industrial, switching or team tracks, and the exclusive jurisdiction of the Special Court to interpret the FSP and original Conrail conveyance documents when required. The Court said:

The Board retains its authority under Sections 10903 and 10906 to approve or deny an abandonment application. Under 45 U.S.C. § 719(e)(2), however, the district court qua the Special Court retains its exclusive jurisdiction to decide the antecedent question if it arises, namely, whether the trackage was conveyed by the FSP as "part of [the rail carrier's] railroad line." 571 F.3d at 19.

Thus, the Court rejected the Board's suggestion that it, rather than the Special Court, could examine the FSP. At least the position taken by the Board in Harsimus, however, included (rather than excluded) an examination of the original Conrail conveyances. Here, post-Harsimus, by avoiding the inquiry altogether the Board would render an incomplete, unsatisfactory and statutorily defective adjudication.

In sum, Harsimus identifies two distinct inquiries that are committed to the exclusive jurisdiction of the Special Court. One is the "nature" of the original conveyance to Conrail, "that is, as a line of railroad or as spur or yard track." 571 F.3d at 19. That is the issue that arose in Harsimus: the parties agreed that the property in question was included in the conveyance order, but disputed the status of the track. The Harsimus decision also stated, however, that the Special

Court has exclusive jurisdiction as to “whether the trackage was conveyed by the FSP as ‘part of [the rail carrier’s] railroad lines.’” 571 F.3d at 20. Thus, in addition to determinations of the status of admittedly conveyed trackage, the Special Court has exclusive jurisdiction to determine whether particular trackage was even conveyed by the FSP in the first instance.

Both inquiries are implicated in the present case. By all appearances, usage, descriptions, mapping and physical layout, the Track No. 8 (a/k/a Valley Industrial Track) that was once located on Buncher’s property was never acquired, owned, held or used by Conrail as anything other than spur, industrial, switching or side track. The definitive answer to the status of the track, as acquired by Conrail, lies in the FSP and original Conveyance Orders. AVRR implicated the other aspect of the Special Court’s exclusive jurisdiction when it raised the 2-rail line theory and asserted that at one time there were 2 lines of railroad in this area. That historical conclusion alone (even if it were assumed to be correct), however, subsumes that Conrail acquired 2 lines of railroad, preserved and did not abandon an easement in one of the through lines of railroad, and then conveyed it to AVRR. But to answer that question requires an inquiry into whether 2 lines of railroad “[were] conveyed by the FSP as part of [the rail carrier’s] railroad lines,” 571 F.3d at 20, a matter committed by statute to the exclusive jurisdiction of the Special Court.

B. The Additional Evidence Reinforces That Proper Jurisdiction Is With The Special Court And But Also Exposes The Fatal Flaws In AVRR’s Positions

In the earlier proceedings before the Board, and before the Court of Appeals, Buncher argued that the 2-line theory proffered by AVRR was not supported by the evidence of record. Buncher still contends that the evidence provided by AVRR is insufficient to find Conrail had acquired two lines in the area between 16th Street and 21st Street and, more fundamentally as

addressed above, Buncher argues that any determination of what Conrail acquired must be made by the Special Court. That said, and without abandoning those positions, if the Board should determine it has jurisdiction, it must reconsider the basis of AVRR's Petition (and AVRR's arguments) in light of the Additional Evidence. That examination shows that AVRR's position is unsustainable in the face of the Additional Evidence.

The first impact of the Additional Evidence is that any significance of AVRR's 2-line theory is effectively eliminated. The Additional Evidence shows that even if the existence of two lines is assumed --- one in Smallman Street and one that crossed Buncher's property --- Conrail filed separate abandonment applications for Smallman Street, the area that AVRR argued was covered by the February 1984 Abandonment Application. Because separate abandonment applications were filed for Smallman Street and for the area of Buncher's property between 16th Street and 21st Street, the February 1984 Abandonment Application did not apply to Smallman Street as AVRR argued. The February 1984 Abandonment Application applied to the area within Buncher's property, and the Additional Evidence confirms that Conrail sought and obtained authorization to abandon any line of railroad that may have once crossed Buncher's property.

- i. The Additional Evidence Shows That The February 1984 Abandonment Application Did Not Apply To Smallman Street And Did Apply To The "Industrial Valley Track" On Buncher's Property.

The Additional Evidence consists of three separate abandonment applications that Conrail filed with respect to track on "Smallman Street" in 1984 (the "Smallman Street Abandonment Applications"), the same year Conrail filed the February 1984 Abandonment Applications to abandon the "Industrial Valley Track." Copies of the Smallman Street Abandonment Applications are attached to the Affidavit of Joseph M. Jackovic as Attachments

"A", "B" and "C." These three abandonment applications were filed by Conrail with the ICC in 1984, two on May 23, 1984 and one on June 8, 1984, just months after the February 1984 Abandonment Application that referenced the "Valley Industrial Track." The Smallman Street Abandonment Applications requested "approval of the abandonment of a portion of the Smallman Street Track in Allegheny County, Pennsylvania," in two cases, and "approval of the abandonment of the Smallman Street Branch in Allegheny County, Pennsylvania," in the case of the third. The three "Smallman Track" abandonment requests were granted by Orders of the ICC in August and September 1984.

These separate abandonment applications were filed by Conrail after the February 1984 Abandonment Application. AVRR had argued in its Reply dated July 15, 2009 seeking to strike Buncher's submission that the February 1984 Abandonment Application had been granted in May 1984 to abandon a line of railroad on Smallman Street. The Board adopted that conclusion in its earlier Decision. The later applications filed by Conrail in May and June 1984 as to Smallman Street track, however, would not have been necessary if the earlier February 1984 Abandonment Application had already abandoned the line on Smallman Street, as AVRR surmised.

What this Additional Evidence therefore clearly shows is that the February 1984 Abandonment Application did not apply to tracks within Smallman Street. The February 1984 Abandonment Application applied to the "Valley Industrial Track," which included the area within Buncher's property at issue as referenced in the 1983 Deed to Buncher. The Additional Evidence means that even if a through line of railroad ever existed there and was conveyed to Conrail, it was abandoned by the February 1984 Abandonment Application and there was no easement remaining on Buncher's property for Conrail to convey to AVRR when it transferred

its railroad properties in 1995. The Additional Evidence, therefore, is directly contrary to the reasons offered by AVRR for ignoring the February 1984 Abandonment Application in the earlier proceeding.

The additional information also demonstrates beyond question the soundness of the principle underlying the decision in Harsimus: that where a dispute raises the need to determine what Conrail actually acquired under the FSP and in the 1976 original conveyances, the inquiry should be made and exclusive jurisdiction to do so is in the Special Court. The additional information provided here shows, on a very practical level, that a more complete and accurate adjudication is achieved when the inquiry into what Conrail acquired is pursued rather than avoided.

ii. All Other Aspects Of AVRR's Argument Are Also Refuted By The Additional Evidence.

The Additional Evidence eliminates the import of the 2-line theory and confirms the significance of the February 1984 Abandonment Application. Other aspects of AVRR's argument are also refuted by the Additional Evidence and, when examined in light of the Additional Evidence, these factors are revealed to provide no support for AVRR's theory that any line of railroad that crossed Buncher's property was not abandoned.

Critical to AVRR's argument was its declaration that at some point in time Conrail began referring to "numerous lines of railroad" by the same name: the "Valley Industrial Track". (See AVRR's Reply dated July 15, 2009, Verified Statement of R. Peterson at p. 7). This asserted "fact" was essential to AVRR's theory because the February 1984 Abandonment Application filed by Conrail and granted by the ICC expressly requested abandonment of the "Valley Industrial Track," the exact same reference that Conrail had used just months earlier in the 1983 Deed with Buncher that reserved the easement. AVRR could only "explain" how the February

1984 Abandonment Application applied to a different segment of track than the same one referred to in the 1983 Deed if it could imagine that two tracks were both in fact simultaneously called the "Valley Industrial Track."

While the Board's earlier Decision found that the two tracks "were both referred to as the Valley Industrial Track" (Decision at p. 8), the only support was the statement of AVRR's President. The Verified Statement of AVRR's President points to references to "Valley Industrial Track" in the 1995 Deed but includes no evidence (other than AVRR's own statement that it is so) that the track on Smallman Street was referred to as the "Valley Industrial Track" in 1984 by Conrail. (See AVRR Reply dated July 15, 2009, Verified Statement of R. Peterson at 7). In other words, other than the self-serving statement by AVRR's President to that effect, there is no evidence that the two lines of railroad envisioned by AVRR were both referred to as the "Valley Industrial Track" by Conrail at the time of the February 1984 Abandonment Application. The Additional Evidence, however, is direct evidence of how Conrail did in fact refer to any line of railroad in Smallman Street in the highly relevant context of actual abandonments. It plainly did not refer to it as the "Valley Industrial Track."

AVRR also pointed to an earlier abandonment application that was filed in 1972 by the trustees of the Penn Central Railroad, before the FSP and before the original conveyances to Conrail. That application was filed to abandon a 0.2-mile section of track between 12th Street and 14th Street. (Buncher Reply dated June 2, 2009, Ex. C). AVRR argued that if, in 1972, the ICC had granted the request by the Penn Central Trustees to abandon a section of rail between 12th Street and 14th Street, then it would have been irrational and nonsensical for Conrail, only twelve years later, to abandon a line between 11th Street and 21st Street that encompassed 12th through 14th Street. Compounding the error of its proposed 2-line theory, AVRR said the later

February 1984 Abandonment Application only made sense if it applied to a second line, since if there was only one line, the later Conrail abandonment would have been redundant to the extent it included the area between 12th Street and 14th Street.⁹

The illogic of deducing from the 1972 Abandonment Application that the later February 1984 Application applied to another, second line is exposed by the Additional Evidence. It shows that Conrail did in fact file a later abandonment application that may have covered the same area, and the reasons do make sense. There are many reasons an abandonment application would include some areas potentially covered by prior applications, such as to insure closure, completeness, and avoidance of “gaps and gores” in descriptions or recitals. The Additional Evidence shows that the questionable inferences suggested by AVRR are just wrong.

The Board also needs to reconsider the view taken in its earlier Decision that “we find Conrail’s actions telling.” (Decision at p. 9). Here, AVRR pointed to the 1995 Quitclaim Deed itself and reference in the Quitclaim Deed to the 1983 easement was included in the 1995 Deed, and on that basis, the Board found: “Conrail believed that it had an active interest there to sell.” (Decision at p. 9). This statement constitutes an inference about the state of mind of Conrail at the time of the 1995 Quitclaim Deed from the inclusion therein of a reference to the 1983 Deed that reserved the easement. Such an inference, however, is flawed as a matter of law. Pennsylvania law holds that “a quitclaim deed is one which purports to convey, and is understood to convey, nothing more than the interest or estate of which the grantor is seized or possessed, if any, at the time.” Stewart v. Chernicky, 266 A.2d 259, 267 (Pa. 1970) (emphasis

⁹ The jurisdictional argument is implicated by this factor as well since it attributes significance to an event – the 1972 Abandonment Application – that occurred before the FSP and original conveyances to Conrail but without considering those critical documents. This matters because the FSP specifically considered the property that had been abandoned by the 1972 Abandonment Application between 12th Street and 14th Street. (See Verified Statement of J. Jackovic dated June 23, 2009; FSP at 744). If there were any significance to the 1972 Abandonment Application, it could be relied on after the FSP and the original conveyance documents were considered for what effect those events had on the status of the line between 12th Street and 14th Street.

added); see also, Greek Catholic Congregation of Borough of Olyphant v. Plummer, 12 A.2d 435, 437 (Pa. 1940) ("Quitclaim deeds, long known to the law, are used when a party wishes to sell or otherwise convey an interest he may think he has in land but does not wish to warrant his title. . . . The distinguishing characteristic of a quitclaim deed is that it is a conveyance of the interest or title of the grantor in and to the property described, rather than the property itself.") (emphasis added). Thus, under Pennsylvania law, the grantor under a quitclaim deed is saying "I may own it or I may not own it" but the grantor is not providing any covenant or warranty of title and is not accountable to the grantee if in fact it owns nothing at all. The grantee accepts whatever interest the grantor may have. While a quitclaim deed is a useful means of preventing further entanglement with the grantor, it is just as likely (and perhaps more so) that it conveys nothing instead of something. Given this legal status of quitclaim deeds, it is not accurate to rely on that 1995 Deed as "telling" evidence of Conrail's state of mind or to support a finding that Conrail believed it had an active interest to sell.¹⁰

Here as well, the Additional Evidence makes this conclusion even more suspect and unreliable. The Additional Evidence shows abandonment of the Valley Industrial Track between 16th Street and 21st Street in the area of Buncher's property. The Quitclaim Deed can only be interpreted as Pennsylvania dictates; the grantor is not stating it has title, only that the grantee gets what the grantor has, which could be nothing.

Finally, in the earlier proceedings before the Board, AVRR also argued that even if the February 1984 Abandonment Application did apply to the rail line easement it sought, the

¹⁰ No direct evidence from Conrail itself was provided by AVRR in this proceeding. This is the case even though AVRR went to Conrail in 2008, just a few months before filing its Petition, to request Conrail to execute the Corrective Deed that added the description for the easement at issue and even though AVRR submitted the Verified Statement of James E. Streett, the President of its parent company, Carload Express, Inc., who had once worked for Conrail from 1969 to 1978. (See Verified Statement of James Streett, attached to AVRR's Reply dated July 15, 2009).

abandonment was not effective because no one has been able to locate a consummation letter from Conrail confirming the date on which the abandonment actually took place. AVRR argued that the submission of such a letter by Conrail was a "condition" to the effectiveness of the ICC Order granting the February 1984 Abandonment Application and, in the absence of proof of such a letter, this Board should ignore the abandonment that was granted by the ICC and find that the line is still in existence and active. This argument is unsound.

First, the sending of the letter by Conrail was not a "condition" to the effectiveness of the February 1984 Abandonment Application. The ICC Certificate and Decision granting the authority for the abandonment specifically states: "This certificate and decision is effective upon service." (Buncher Reply dated June 2, 2009, Ex. G). Since the grant of the abandonment authority was effective upon service and not conditional, the jurisdiction of the ICC (now STB) was concluded. Lucas v. Township of Bethel, 319 F.3d 595 (3rd Cir. 2003) (where a grant of abandonment authority under NERSA is made without condition it concludes the agency's jurisdiction).

Second, AVRR's argument makes no sense. The ICC Order did not provide that any letter or notice was required to be filed within any stated period of time or state the consequences of any failure to file the letter. This reference to a letter was intended to be informational not substantive. If AVRR's argument were accepted, it would mean that any easement it alleges to hold is entirely ephemeral, subject to being extinguished if a consummation letter from Conrail is ever located or filed.

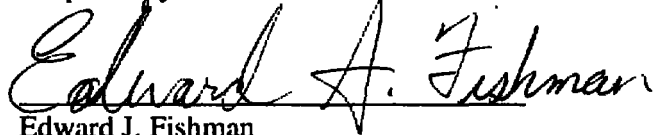
Finally, it is AVRR's burden in this proceeding to prove the existence of a valid, continuing easement. In the face of all the overwhelming evidence to the contrary --- the February 1984 Abandonment Application, the removal of the tracks, the fact that the Order

granting the abandonment was effective upon service and was issued under procedures then in effect to expedite Conrail's abandonment process under NERSA --- AVRR cannot satisfy that burden by simply positing that all of that evidence is outweighed by the inability of any party to locate a letter more than 25 years after the abandonment application was granted.

V. Conclusion

For the reasons set forth above, Buncher respectfully requests the Board issue an order determining that the Board has no jurisdiction over AVRR's Petition or, alternatively, declaring that AVRR does not have an active rail easement over Buncher's property and denying the Petition.

Respectfully submitted,



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Date: April 11, 2011

Exhibit A

CONRAIL



cc - R. D. Cohen - F
D. E. Yerks
E. C. Molengraft
J. T. Orsborn
T. J. Hieber
from
G. M. Williams, Jr.
6-6-84

May 23, 1984

Mr. James H. Bayne
Acting Secretary
Interstate Commerce Commission
Room 1312
12th and Constitution Avenues, NW
Washington, DC 20423

Re: Application Under Section 308(c) of the Regional
Rail Reorganization Act of 1973, as enacted by
Section 1156 of the Northeast Rail Service Act of
1981, for abandonment of A Portion of the Smallman
Street Track in Allegheny County, Pennsylvania
Docket No. AB 167 (Sub No. 572N)

Dear Mr. Bayne:

Enclosed for filing with the Commission are the original
and six copies of the above described application. This
application is submitted under Section 308(c) of the Regional
Rail Reorganization Act of 1973, as enacted by Section 1156
of the Northeast Rail Service Act of 1981. Notice of Insuf-
ficient Revenue was filed October 12, 1983.

Copies of the application have been served on the
shippers and other persons designated on the attachment to
this letter.

Please stamp and return the enclosed extra copy of this
letter to acknowledge receipt.

Very truly yours,

Charles E. Mechem
Senior General Attorney
1138 Six Penn Center Plaza
Philadelphia, PA 19103
(215) 977-5017

CEM/km

Enclosures

May 23, 1984
Page 2

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Agrl. Administration Bldg.
Pennsylvania State University
University Park, Pa. 16802

Bureau of Outdoor Recreation
U.S. Dept. of Interior
18th & Constitution, NW
Washington, DC 20240

Office of the Special Counsel
Interstate Commerce Commission
Washington, DC 20423

May 23, 1984
Page 3

Military Traffic Management
Command - Nassif Building - Room 720
STOP 105 MT-SA
Washington, DC 20315

National Railroad Passenger Corporation
400 North Capitol Street, NW
Washington, DC 20001

Railroad Retirement Board
844 North Rush Street
Chicago, IL 60611

Railway Labor Executives Association
Railway Labor Building
400 1st Street, NW
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William B. Parker
Chief, Market Planning
U. S. R. A.
955 L'Enfant Plaza, North - SW
Washington, DC 20595

Byrnes & Kiefer Company
13th and Smallman Street
Pittsburgh, PA 15222

Mock Seed Company
13th and Smallman Street
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Steve Branca
Department of City Planning
Public Safety Building
Pittsburgh, PA 15219

Adelman Lumber Company
13th and Smallman Streets
Pittsburgh, PA 15222

May 23, 1984
Page 4

bcc: L. S. Crane
S. M. Reed
A. Schimmel
J. A. Hagen
R. B. Hasselman
B. B. Wilson
W. B. Newman, Jr.
C. N. Marshall
R. W. Garbett (Attn: Saul Resnick)
C. W. Owens
R. F. Bush
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D. W. Mattson
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G. M. Williams, Jr.
A. T. Lewis
C. E. Wogan
W. H. Sheppard
R. von dem Hagen
V. H. Green
K. L. MacKavanagh
J. A. Sees
J. E. Sandefur
J. W. Dietz
B. J. Gordon
J. T. Sullivan
E. H. Follweiler
R. E. Gratz

BEFORE THE
INTERSTATE COMMERCE COMMISSION

| | | |
|------------------------------------|---|-------------------|
| APPLICATION OF CONSOLIDATED RAIL | : | DOCKET NO. AB 167 |
| CORPORATION PURSUANT TO SECTION | : | (SUB NO. 572N) |
| 308(c) OF THE REGIONAL RAIL REOR- | : | |
| GANIZATION ACT OF 1973, AS AMENDED | : | |
| BY SECTION 1156 OF THE NORTHEAST | : | |
| RAIL SERVICE ACT OF 1981, FOR | : | |
| APPROVAL OF THE ABANDONMENT OF | : | |
| A PORTION OF THE SMALLMAN STREET | : | |
| TRACK IN ALLEGHENY COUNTY, | : | |
| PENNSYLVANIA | : | |

Charles E. Mechem
General Attorney
Consolidated Rail Corporation
1138 Six Penn Center Plaza
Philadelphia, PA 19103
(215) 977-5017

May 23, 1984

BEFORE THE
INTERSTATE COMMERCE COMMISSION

APPLICATION OF CONSOLIDATED RAIL : DOCKET NO. AB 167
CORPORATION PURSUANT TO SECTION : (SUB NO. 572N)
308(c) OF THE REGIONAL RAIL REOR- :
GANIZATION ACT OF 1973, AS AMENDED :
BY SECTION 1156 OF THE NORTHEAST :
RAIL SERVICE ACT OF 1981, FOR :
APPROVAL OF THE ABANDONMENT OF :
A PORTION OF THE SMALLMAN STREET :
TRACK IN ALLEGHENY COUNTY, :
PENNSYLVANIA :

TO THE INTERSTATE COMMERCE COMMISSION, WASHINGTON, DC:

1. The name of applicant is Consolidated Rail Corporation (Conrail). Correspondence relating to this application should be addressed to Charles E. Mechem, General Attorney, 1138 Six Penn Center, Philadelphia, Pennsylvania 19103.

2. Applicant is a common carrier by railroad subject to the Northeast Rail Service Act of 1981 (NERSA).

3. Conrail files this application pursuant to Section 308(c) of the Regional Rail Reorganization Act of 1973 (RRR Act), as amended by Section 1156 of NERSA. A copy of said statute is attached hereto as Exhibit A.

4. By this application Conrail requests the Commission's approval of the abandonment of the line of rail

approximately 0.3 mile in length described below and situated in Allegheny County, Pennsylvania:

A portion of the Smallman Street Track in Pittsburgh from a point (approximately Milepost 0.0) east of 11th Street to a point (approximately Milepost 0.3) east of 14th Street.

The above-described line will hereafter be referred to as the Subject Line.

5. Attached as Exhibit B is a map showing the location of the Subject Line.

6. Attached hereto as Exhibit C is a summary, or condensed statement, based on the most recent studies available to Conrail, setting forth (a) "revenues attributable," (b) an estimate of avoidable costs for the Subject Line, and (c) an estimate of the subsidy that would be required to keep the line in operation. Exhibit C includes an estimate of the cost of the work that would be required to preserve the Subject Line in FRA Class 1 condition. Attached hereto as Exhibit D is a statement of the value of the Subject Line, which discloses that Conrail claims no net liquidation value for the Subject Line. Pursuant to Section 308(d) of the RRR Act the aforesaid revenue, cost, and subsidy information will be furnished, on request, to any responsible person other than a recipient of this application who seriously desires to consider making an offer of financial assistance.

7. Within fifteen days after the filing of this application, persons desiring a more detailed statement setting forth the basis upon which the subsidy estimate was calculated, may request such information in writing. Such detailed statement will be furnished within fifteen days after receipt of the request.

8. All requests for information specified above as well as offers of financial assistance should be made in writing to C. E. Mechem, Room 1138 Six Penn Center, Philadelphia, PA 19103. Copies of such requests and offers, including the applicable docket number, should be sent to the Office of the Secretary, Case Control Branch, Room 1312, Interstate Commerce Commission, Washington, DC 20423. The following notation should be typed in bold face type at the lower left hand corner of envelopes containing offers: "Rail Section AB-OFA."

9. Recipients of this application are advised that any person requesting information or assistance with respect to the abandonment provisions of the Northeast Rail Service Act or the requirements and procedures governing offers of financial assistance (including proof of financial responsibility) may contact the ICC Office of Proceedings, Rail Section (telephone 202-275-7245).

WHEREFORE, Applicant requests that the Commission, within 90 days after the filing hereof, approve the abandonment of the Subject Line identified in Paragraph 4 above.

Respectfully submitted,

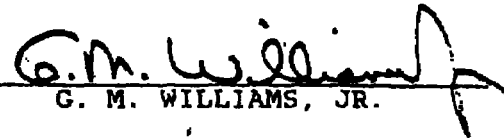
Charles E. Mechem

Charles E. Mechem
General Attorney *km*
1138 Six Penn Center Plaza
Philadelphia, PA 19103
(215) 977-5017

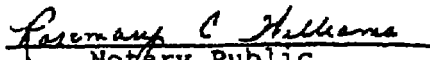
VERIFICATION

COMMONWEALTH OF PENNSYLVANIA :
: SS
COUNTY OF PHILADELPHIA :

G. M. WILLIAMS, JR. makes oath and says that he is Assistant Vice President, Regional Market Development of Consolidated Rail Corporation, the applicant herein; that he has been authorized by proper corporate action on the part of said applicant to verify and file with the Interstate Commerce Commission the foregoing application; that he has general knowledge of the facts and matters relied upon in such application; and that all representations set forth therein are true and correct to the best of his knowledge, information and belief.


G. M. WILLIAMS, JR.

Sworn to and Subscribed :
before me this 22nd day :
of May , 1984. :


Notary Public
Rosemary C. Williams
Notary Public, Phila., Phila. Co.
My Commission Expires May 2, 1987

§ 794. **Assessment.**

(a) General. The Corporation may, in accordance with this section, file with the Commission an application for a certificate of assessment for any tax which is part of the system of the Corporation. Any such application shall be governed by this section and shall not, except as expressly provided in this section, be subject to the provisions of chapter 109 of title 49, United States Code (49 USC §§ 10201 et seq.).

(b) Application for development. Any application for development that is filed by the Corporation under this section before December 1, 1941, shall be governed by the Commission within 90 days after the date such application is filed unless, within such 90-day period, an offer of financial assistance is made to a contractor with subsection (c) of this section with respect to the tax to be assessed.

(c) Failure of financial review. (1) The Corporation may, prior to November 1, 1943, file with the Commission a notice of financial review for any tax which is part of the system of the Corporation.

(2) At any time after the 90-day period beginning with the filing of a notice of financial review for a tax, the Corporation may file an application for development for such tax. An application for development that is filed by the Corporation under this subsection for a tax for which a notice of financial review was filed under paragraph (1) shall be governed by the Commission within 90 days after the date such application is filed unless, within such 90-day period, an offer of financial assistance is made to a contractor with subsection (c) of this section with respect to such tax.

(d) Other of financial assistance. (1) The provisions of section 10002(c)(7) of title 49, United States Code (49 USC § 10002(c)(7)) (including the filing requirements of subsection (a) thereof), shall apply to any offer of financial assistance under subsection (b) or (c) of this section.

(2) The Corporation shall provide any person that intends to make an offer of financial assistance under subsection (b) or (c) of this section with such information as the Commission may require.

(3) For liquidation. (i) If any application for development is granted under subsection (b) of this section, the Commission shall, as soon as practicable, operate the tax legislation values of the tax to be assessed, and shall publicly notice of such operation in the Federal Register.

(ii) Applicable under paragraph (1) shall not be applicable.

(3)(A) If within 120 days after the date on which an application is published in the Federal Register under paragraph (1), the Corporation receives a loan law offer for the tax, for 75 percent of the amount in which the legislation value of such tax was operated by the Commission, of the tax to be assessed, the Corporation shall not such law offer and the Commission, at the same time the parties otherwise agree, establish an equitable division of loan rates for through means over such tax.

(B) If the Corporation receives no loan law offer under subsection (A), within such 120-day period, the Corporation may operate or dispose of the tax as it chooses, except that the Corporation may not demand bridge, or other structure (not including rail, airport, and other rail facilities) for 120 days thereafter. The Secretary may require that bridge or other structure (not including rail, airport, and other rail facilities), not be demanded for an additional 6 months if he determines all liability of any sort related to such property.

(4) If the Corporation receives (3)(A) of the subsection of any law of the Commission relating with law within five years after such period, the provision of any such legislation shall be paid into the general fund of the Treasury of the United States.

(5) Employee protection. The provisions of section 100010(c)(7) of title 49, United States Code (49 USC § 100010(c)(7)), shall not apply to any development granted under this section. Any employee who is so protected by the compensatory provisions of this V of the Act (section 45 USC § 771 et seq.) immediately prior to the effective date of the National Rail Service Act of 1940, shall be entitled of employees by such an extension shall be eligible for employee protection under section 701 of the Act (49 USC § 771).

(b) If, within 15 days after the publication required in subsection (a) of this section, the Commission finds that—

- [illegible]

Consolidated Rail Corporation
Application for Abandonment

Docket AB-167
Sub No. 572 N

EXHIBIT B
LOCATION AND MAP

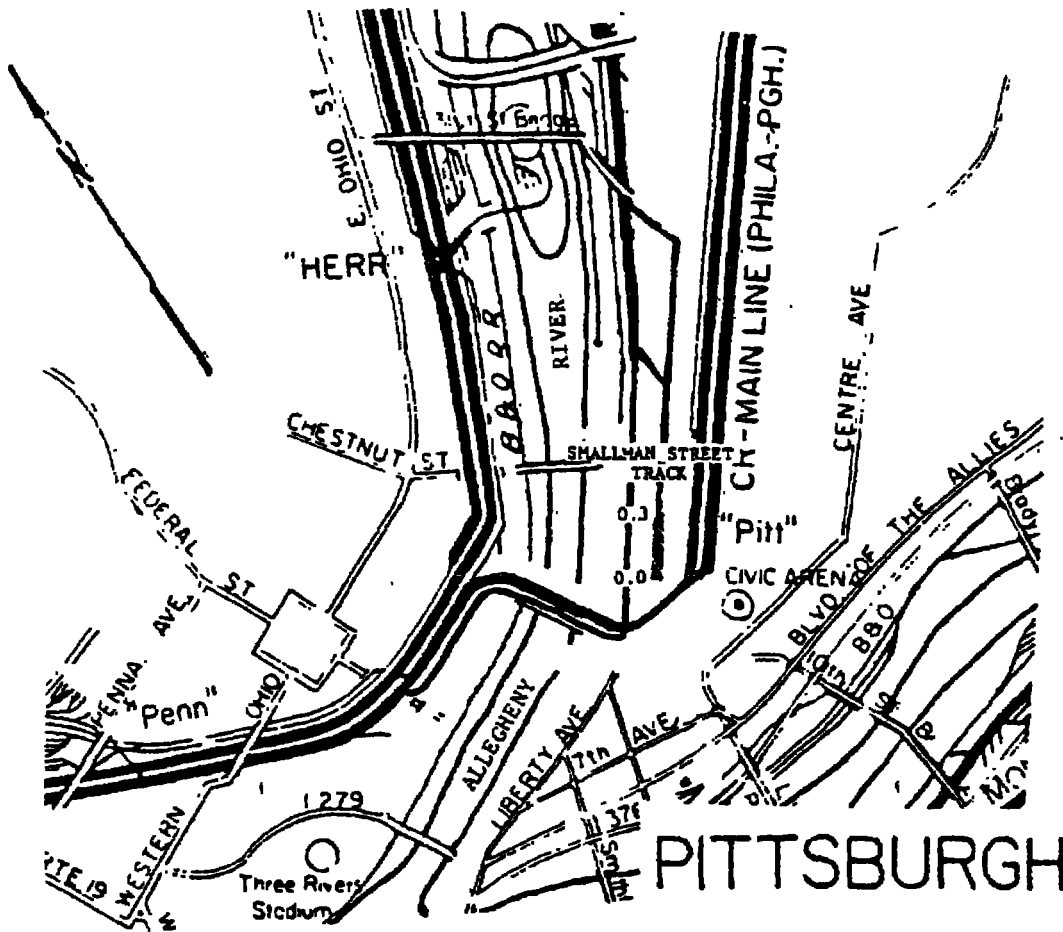
SHALLMAN STREET TRACK

At Pittsburgh

East Side of 11th Street (Approx. M.P. 0.0) to
East of 14th Street (Approx. M.P. 0.3)

State(s): PA

Counties: Allegheny



PROPOSED ABANDONMENT ~~SHALLMAN STREET TRACK~~

Consolidated Rail Corporation
Application for AbandonmentICC Docket AB-167 Sub No. 572 NEXHIBIT CREVENUE AND COST DATA
SMALLMAN STREET TRACK

(Approx. M.P. 0.0) to (Approx. M.P. 0.3)

YEAR 1982 CARLOADS 3

| Line No | | Base Yr 1982 | Est Sub 1982 | Proj Sub 1984 |
|---------|-----------------------------------|-----------------|-----------------|------------------|
| 1 | Frt Rev Orig/Term On Branch . . . | \$ 1897 | \$ 1897 | \$ 1994 |
| 2 | All Other Rev and Income. . . . | 0 | 0 | 0 |
| 3 | Total Revenues Attributable . . | 1897 | 1897 | 1994 |
| 4a | Maint. of Way & Structures. . . | 1457 | 1457 | 1669 |
| b | Maintenance of Equipment. . . . | 90 | 90 | 93 |
| c | Transportation. | 229 | 229 | 245 |
| d | General Administration. | 0 | 0 | 0 |
| e | Freight Car Costs | 89 | 89 | 92 |
| f | Revenue Taxes | 0 | 0 | 0 |
| g | Property Taxes. | 0 | 0 | 0 |
| | Total On-Branch Costs | 1865 | 1865 | 2099 |
| 5 | Off Branch Costs. | 2470 | 2470 | 2673 |
| 6 | Total Avoidable Costs | 4335 | 4335 | 4772 |
| | Subsidization Costs | ////////// | | |
| 7 | Rehabilitation. | ////////// | 42843 | 42843 |
| 8 | Administrative Costs. | ////////// | 114 | 120 |
| 9 | Casualty Reserve Account. . . . | ////////// | 11 | 12 |
| 10 | Total Subsidization Costs . . | ////////// | 42968 | 42975 |
| | Return on Valuation | ////////// | | |
| 11a | Working Capital | ////////// | 74 | 84 |
| b | Net Salvage Value | ////////// | 0 | 0 |
| c | Estimated Value of Real Estate. | ////////// | 0 | 0 |
| | Total Valuation of Property . | ////////// | 74 | 84 |
| 12 | Rate of Return. | ////////// | 17.7% | 17.7% |
| 13 | Total Return on Value | ////////// | 13 | 15 |
| 14a | Avoidable Loss From Operations. | 2438 | ////////// | ////////// |
| b | Opportunity Costs | 560 | ////////// | ////////// |
| c | Total Avoidable Loss. | 2998 | ////////// | ////////// |
| 15 | Estimated Subsidy | ////////// | 45419 | 45768 |
| | (Lines 6, 10 and 13 less line 3) | ////////// | ===== | ===== |

Date computed: December 28, 1983

Exhibit C, page 1 of 2

Consolidated Rail Corporation
Application for Abandonment

Docket AB-167
Sub No. 572 N

EXHIBIT C
REVENUE AND COST DATA

SMALLMAN STREET TRACK

(Approx. M.P. 0.0) to (Approx. M.P. 0.3)

Revenue and Cost Data calculated using the cost methodologies and standards prescribed by 49 CFR, Part 1121, as modified by the Commission in Finance Docket 29623.

| LINE NO | FOOTNOTES |
|---------|---|
| 4F | Conrail pays no state revenue taxes as a result of an exemption from such taxes provided to Conrail by Section 217 (c) of the Regional Rail Reorganization Act of 1973, as amended by the Northeast Rail Service Act of 1981. |
| 4G | Conrail pays no state-levied property taxes as a result of an exemption from such taxes provided to Conrail by Section 217 (c) of the Regional Rail Reorganization Act of 1973, as amended by the Northeast Rail Service Act of 1981. Conrail continues to pay property taxes levied by political subdivisions of States, as such taxes are not subject to the exemption. |
| 7 | Rehabilitation required during first subsidy year only. Five year rehabilitation is estimated at \$ <u>42,843</u> . |
| 11B | See Exhibit D (Estimated Net Liquidation Value) of this application for an explanation of the basis for establishing the Net Salvage Value. |
| 11C | See Exhibit D (Estimated Net Liquidation Value) of this application for an explanation of the basis for establishing the Estimated Value of Real Estate. |

Consolidated Rail Corporation
Application for AbandonmentDocket AB-167
Sub No. 572 NEXHIBIT DESTIMATED NET LIQUIDATION VALUESMALLMAN STREET TRACK

(Approx. M.P. 0.0) to (Approx. M.P. 0.3)

| | | |
|-----|---|------|
| 1. | Gross track salvage | \$. |
| 2. | Takeup costs: | |
| a. | Common track | |
| b. | Turn outs | |
| c. | Road crossing restoration | |
| 3. | Total takeup costs | |
| 4. | Net track salvage | |
| | (line 1 less line 3) | |
| 5. | Gross salvage- communications and signals | |
| 6. | Cost to remove | |
| 7. | Net communications and signal salvage | |
| | (line 5 less line 6) | |
| 8. | Net bridge and building salvage | * |
| 9. | Total net salvage value | |
| | (sum of lines 4, 7 and 8) | |
| 10. | Estimated value of underlying real estate | * |
| 11. | Estimated Net Liquidation Value | \$ * |
| | (line 9 plus line 10) | |

*FOOTNOTE

Street railroad. The gross salvage value is exceeded by or equal to the costs for removal. Conrail has no real estate interest in the line and does not claim a net liquidation value.

ONRAIL



MEMORANDUM

G-4C New 12-82

DATE: July 1, 1985

TO: DISTRIBUTION

FROM: J. F. Betak

LOCATION: Rm. 1601 - 1528 Walnut St.

SUBJECT: Lines Cleared for Dismantling

The Smallman Street Track (Sub No. 572N) at Pittsburgh, PA from MP 0.00 to MP 0.30 is cleared for dismantling. This line was filed for abandonment on May 24, 1984 and approved by the ICC on August 31, 1984. The line was embargoed on March 5, 1985 and the 120-day date was December 29, 1984.

Please note that an approved AFE is required prior to physically dismantling the subject lines.

Before dismantling track or disposing of real estate, Messr. Gordon and Huff should comply with applicable state requirements regarding crossings and bridges as well as state requirements regarding the disposition of abandoned right-of-way.

7-18
7/18

AMM

- 2 -

DISTRIBUTION:

| | | |
|---------------------|---|---------------------------|
| L. Stanley Crane | - | 1838 Six Penn Center |
| S. M. Reed | - | 1846 Six Penn Center |
| C. N. Marshall | - | 1810 Six Penn Center |
| R. B. Hasselman | - | 1740 Six Penn Center |
| G. C. Woodward | - | 1534 Six Penn Center |
| B. B. Wilson | - | 1842 Six Penn Center |
| W. B. Newman, Jr. | - | 955 L'Enfant Plaza |
| S. Resnick | - | 1040 Six Penn Center |
| C. W. Owens | - | 1744 Six Penn Center |
| J. T. Whatmough | - | 401-1528 Walnut Street |
| J. F. Folk | - | 950 Six Penn Center |
| B. J. Gordon | - | 1640 Six Penn Center |
| L. A. Huff | - | 901-1528 Walnut Street |
| G. M. Williams, Jr. | - | 1238 Six Penn Center |
| J. T. Sullivan | - | 1200-15 N. 32nd Street |
| C. E. Wogan | - | 801-1528 Walnut Street |
| D. W. Mattson | - | 806 Six Penn Center |
| T. H. Ramsey | - | 1601-1528 Walnut Street |
| C. E. Mechem | - | 1138 Six Penn Center |
| J. E. Sandefur | - | 901-1528 Walnut Street |
| J. F. Jaeger | - | 901-1528 Walnut Street |
| J. J. Baffa | - | 1640 Six Penn Center |
| D. F. Donovan | - | 1138 Six Penn Center |
| W. G. Kemmerer | - | 1634 Six Penn Center |
| J. T. Orsborn | - | 1601-1528 Walnut Street |
| R. L. Teeter | - | 1640 Six Penn Center |
| W. G. Jones | - | 1101-15 North 32nd Street |
| L. E. Williams | - | 601-Six Penn Center |
| T. J. O'Brien | - | 1338-Six Penn Center |
| W. R. Oates | - | 1601-1528 Walnut Street |

cc: R. E. Gratz
C. A. Bassani
D. E. Yerks

ONRAIL

MEMORANDUM

G-4C Nov 12-82

DATE: September 7, 1984

TO: G. M. Williams, Jr.
Room 1601
1528 Walnut Street

FROM: Charles E. Mechem
Room 1138
Six Penn Center

SUBJECT: ICC Abandonment Orders

ESM

By orders served August 31 and September 5, copies of which are attached, the Commission has approved the following Window II abandonments:

| <u>Line</u> | <u>Sub No.</u> |
|----------------------------------|----------------|
| Smallman Street Track | 571 PqL |
| Smallman Street Track | 572 " |
| Logansport Secondary Track | 618 Chi |
| South Bend Secondary Track | 672 " |
| Goshen Industrial Track | 682 " |
| Niles Industrial Track | 689 PqL |
| Oxford Road Branch Cluster | 699 KOP |
| Pittsburgh/Columbus Panhandle | 713 PqL |
| Olney Running Track | 719 KOP |
| 7X Track | 728 Cin |
| Westmoreland Street Branch | 736 KOP |
| Raritan North Shore Branch | 755 NWK |
| Logansport Secondary Track | 760 Chi |
| Racine Avenue Line | 772 " |
| Shamokin Secondary Track | 779 KOP |
| Pittsburgh/Chicago Main Line | 789 Chi |
| Terre Haute-Lenox Main Line | 800 " |
| Hulman Lead Track | 830 Cin |
| Indian Creek Secondary Track | 843 Cin |
| South Chicago and Southern Track | 844 Chi |

I will appreciate your letting me know when Conrail implements these orders by (1) embargoing the lines and (2) cancellation of relevant tariffs.

CEM/km

Enclosures

MVE

D2

INTERSTATE COMMERCE COMMISSION

SERVICE DATE

CERTIFICATE AND DECISION

AUG 31 1984

Docket No. AB-167 (Sub-No. 572N)

CONRAIL ABANDONMENT IN ALLEGHENY COUNTY, PA

Decided: August 28, 1984

On May 24, 1984, Consolidated Rail Corporation (Conrail) filed an application pursuant to section 308 of the Regional Rail Reorganization Act of 1973^{1/} to abandon a total of 0.3 miles of track known as the Smallman Street Track, which extends from a point near milepost 0.0 east of 11th Street to a point near milepost 0.3 east of 14th Street in the City of Pittsburgh, in Allegheny County, PA.

Under section 308(c) the Commission must grant any application for abandonment filed by Conrail within 90 days after the date such application is filed unless an offer of financial assistance is made pursuant to section 308(d) during that 90-day period.

The time for the filing of offers of financial assistance has expired without a bona fide offer. In the absence of such an offer, an appropriate certificate and decision should be entered.

It is certified: Conrail is authorized to abandon the line described above.

It is ordered:

This certificate and decision is effective upon service.

By the Commission, Division 2, Commissioners Gradison, Taylor, and Sterrett. Commissioner Taylor is assigned to this Division for the purpose of resolving tie votes. Since there was no tie in this matter, Commissioner Taylor did not participate.

(SEAL)

James H. Bayne
Secretary

^{1/} This section was added by the Northeast Rail Service Act of 1981. Pub. L. 97-35.

CONRAIL



May 23, 1984

Mr. James H. Bayne
Acting Secretary
Interstate Commerce Commission
Room 1312
12th and Constitution Avenues, NW
Washington, DC 20423

Re: Application Under Section 308(c) of the Regional
Rail Reorganization Act of 1973, as enacted by
Section 1156 of the Northeast Rail Service Act of
1981, for abandonment of A Portion of the Smallman
Street Track in Allegheny County, Pennsylvania
Docket No. AB 167 (Sub No. 572N)

Dear Mr. Bayne:

Enclosed for filing with the Commission are the original
and six copies of the above described application. This
application is submitted under Section 308(c) of the Regional
Rail Reorganization Act of 1973, as enacted by Section 1156
of the Northeast Rail Service Act of 1981. Notice of Insuf-
ficient Revenue was filed October 12, 1983.

Copies of the application have been served on the
shippers and other persons designated on the attachment to
this letter.

Please stamp and return the enclosed extra copy of this
letter to acknowledge receipt.

Very truly yours,

Charles E. Mechem
Senior General Attorney
1138 Six Penn Center Plaza
Philadelphia, PA 19103
(215) 977-5017

CEM/km

Enclosures

May 23, 1984
Page 2

cc: The Honorable Richard L. Thornburgh
Governor, Commonwealth of Pennsylvania
State Capitol
Harrisburg, PA 17120

Pennsylvania DOT
1200 Transportation and Safety Building
Harrisburg, PA 17120

Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17120

Rail Services Planning Office
12th and Constitution Avenues, NW
Washington, DC 20423

Harry C. Dennis
Office of Federal Assistance
(RFA-23)
Federal Railroad Administration
400 Seventh Street, SW
Washington, DC 20036

Mr. Wayne A. Michel
Office of Proceedings
Interstate Commerce Commission
12th & Constitution Avenue, NW
Washington, DC 20423

Director, Extension Service
Dr. J.M. Beattie
Agrl. Administration Bldg.
Pennsylvania State University
University Park, Pa. 16802

Bureau of Outdoor Recreation
U.S. Dept. of Interior
18th & Constitution, NW
Washington, DC 20240

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May 23, 1984
Page 3

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May 23, 1984
Page 4

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J. A. Sees
MVE ~~J. E. Sandefur~~
J. W. Dietz
B. J. Gordon
J. T. Sullivan
E. H. Follweiler
R. E. Gratz

Consolidated Rail Corporation
Application for Abandonment

Docket AB-167
Sub No. 572 N

| <u>EXHIBIT D</u> <u>ESTIMATED NET LIQUIDATION VALUE</u> <u>SMALLMAN STREET TRACK</u> (Approx. M.P. 0.0) to (Approx. M.P. 0.3) | | |
|---|--|------|
| 1. | Gross track salvage | \$ |
| 2. | Takeup costs: | |
| a. | Common track | |
| b. | Turn outs | |
| c. | Road crossing restoration | |
| 3. | Total takeup costs | |
| 4. | Net track salvage | |
| | (line 1 less line 3) | |
| 5. | Gross salvage - communications and signals | |
| 6. | Cost to remove | |
| 7. | Net communications and signal salvage | |
| | (line 5 less line 6) | |
| 8. | Net bridge and building salvage | * |
| 9. | Total net salvage value | |
| | (sum of lines 4, 7 and 8) | * |
| 10. | Estimated value of underlying real estate | |
| 11. | Estimated Net Liquidation Value | \$ * |
| | (line 9 plus line 10) | |
| <u>*FOOTNOTE</u> | | |
| <p>Street railroad. The gross salvage value is exceeded by or equal to the costs for removal. Conrail has no real estate interest in the line and does not claim a net liquidation value.</p> | | |

BEFORE THE
INTERSTATE COMMERCE COMMISSION

| | | |
|------------------------------------|---|-------------------|
| APPLICATION OF CONSOLIDATED RAIL | : | DOCKET NO. AB 167 |
| CORPORATION PURSUANT TO SECTION | : | (SUB NO. 572N) |
| 308(c) OF THE REGIONAL RAIL REOR- | : | |
| GANIZATION ACT OF 1973, AS AMENDED | : | |
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| RAIL SERVICE ACT OF 1981, FOR | : | |
| APPROVAL OF THE ABANDONMENT OF | : | |
| A PORTION OF THE SMALLMAN STREET | : | |
| TRACK IN ALLEGHENY COUNTY, | : | |
| PENNSYLVANIA | : | |

Charles E. Mechem
General Attorney
Consolidated Rail Corporation
1138 Six Penn Center Plaza
Philadelphia, PA 19103
(215) 977-5017

May 23, 1984

BEFORE THE
INTERSTATE COMMERCE COMMISSION

APPLICATION OF CONSOLIDATED RAIL : DOCKET NO. AB 167
CORPORATION PURSUANT TO SECTION : (SUB NO. 572N)
308(c) OF THE REGIONAL RAIL REOR- :
GANIZATION ACT OF 1973, AS AMENDED :
BY SECTION 1156 OF THE NORTHEAST :
RAIL SERVICE ACT OF 1981, FOR :
APPROVAL OF THE ABANDONMENT OF :
A PORTION OF THE SMALLMAN STREET :
TRACK IN ALLEGHENY COUNTY, :
PENNSYLVANIA :

TO THE INTERSTATE COMMERCE COMMISSION, WASHINGTON, DC:

1. The name of applicant is Consolidated Rail Corporation (Conrail). Correspondence relating to this application should be addressed to Charles E. Mechem, General Attorney, 1138 Six Penn Center, Philadelphia, Pennsylvania 19103.

2. Applicant is a common carrier by railroad subject to the Northeast Rail Service Act of 1981 (NERSA).

3. Conrail files this application pursuant to Section 308(c) of the Regional Rail Reorganization Act of 1973 (RRR Act), as amended by Section 1156 of NERSA. A copy of said statute is attached hereto as Exhibit A.

4. By this application Conrail requests the Commission's approval of the abandonment of the line of rail

approximately 0.3 mile in length described below and situated in Allegheny County, Pennsylvania:

A portion of the Smallman Street Track in Pittsburgh from a point (approximately Milepost 0.0) east of 11th Street to a point (approximately Milepost 0.3) east of 14th Street.

The above-described line will hereafter be referred to as the Subject Line.

5. Attached as Exhibit B is a map showing the location of the Subject Line.

6. Attached hereto as Exhibit C is a summary, or condensed statement, based on the most recent studies available to Conrail, setting forth (a) "revenues attributable," (b) an estimate of avoidable costs for the Subject Line, and (c) an estimate of the subsidy that would be required to keep the line in operation. Exhibit C includes an estimate of the cost of the work that would be required to preserve the Subject Line in FRA Class 1 condition. Attached hereto as Exhibit D is a statement of the value of the Subject Line, which discloses that Conrail claims no net liquidation value for the Subject Line. Pursuant to Section 308(d) of the RRR Act the aforesaid revenue, cost, and subsidy information will be furnished, on request, to any responsible person other than a recipient of this application who seriously desires to consider making an offer of financial assistance.

7. Within fifteen days after the filing of this application, persons desiring a more detailed statement setting forth the basis upon which the subsidy estimate was calculated, may request such information in writing. Such detailed statement will be furnished within fifteen days after receipt of the request.

8. All requests for information specified above as well as offers of financial assistance should be made in writing to C. E. Mechem, Room 1138 Six Penn Center, Philadelphia, PA 19103. Copies of such requests and offers, including the applicable docket number, should be sent to the Office of the Secretary, Case Control Branch, Room 1312, Interstate Commerce Commission, Washington, DC 20423. The following notation should be typed in bold face type at the lower left hand corner of envelopes containing offers: "Rail Section AB-OFA."

9. Recipients of this application are advised that any person requesting information or assistance with respect to the abandonment provisions of the Northeast Rail Service Act or the requirements and procedures governing offers of financial assistance (including proof of financial responsibility) may contact the ICC Office of Proceedings, Rail Section (telephone 202-275-7245).

WHEREFORE, Applicant requests that the Commission, within 90 days after the filing hereof, approve the abandonment of the Subject Line identified in Paragraph 4 above.

Respectfully submitted,

Charles E. Mechem

Charles E. Mechem
General Attorney *km*
1138 Six Penn Center Plaza
Philadelphia, PA 19103
(215) 977-5017


VERIFICATION

COMMONWEALTH OF PENNSYLVANIA :
: SS
COUNTY OF PHILADELPHIA :

G. M. WILLIAMS, JR. makes oath and says that he is Assistant Vice President, Regional Market Development of Consolidated Rail Corporation, the applicant herein; that he has been authorized by proper corporate action on the part of said applicant to verify and file with the Interstate Commerce Commission the foregoing application; that he has general knowledge of the facts and matters relied upon in such application; and that all representations set forth therein are true and correct to the best of his knowledge, information and belief.


G. M. WILLIAMS, JR.

Sworn to and Subscribed :
before me this 22nd day :
of May , 1984. :


Notary Public
Rosemary C. Williams
Notary Public, Phila., Phila. Co.
My Commission Expires May 2, 1987

EXCERPTS FROM 49 U.S.C.A. 10905

[illegible]

10 If, within 15 days after the publication required in subsection (5) of this section, the Commission finds that—

- [illegible]

Consolidated Rail Corporation
Application for Abandonment

Docket AB-167
Sub No. 572 N

EXHIBIT B
LOCATION AND MAP

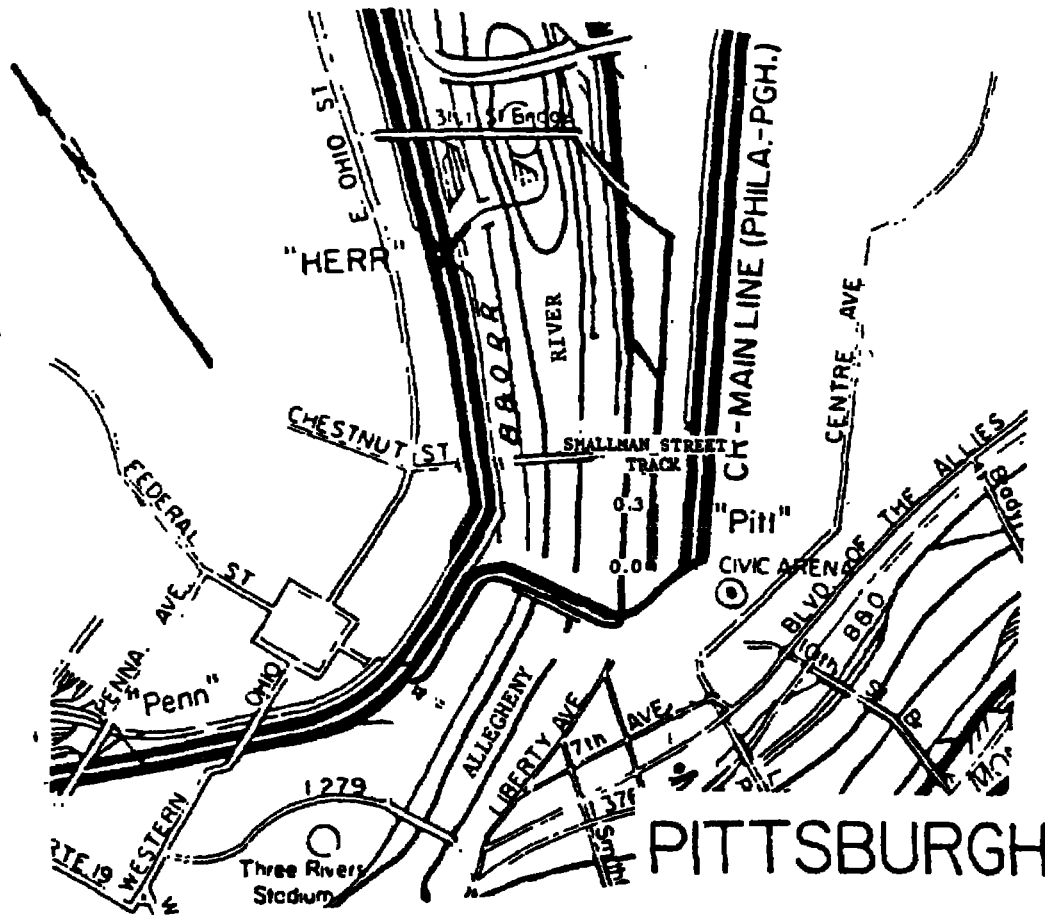
SHALLMAN STREET TRACK

At Pittsburgh

East Side of 11th Street (Approx. M.P. 0.0) to
East of 14th Street (Approx. M.P. 0.3)

State(s): PA

Counties: Allegheny



PROPOSED ABANDONMENT

Consolidated Rail Corporation
Application for AbandonmentICC Docket AB-167 Sub No. 572 N

EXHIBIT C

REVENUE AND COST DATA

SMALLMAN STREET TRACK

(Approx. M.P. 0.0) to (Approx. M.P. 0.3)

YEAR 1982 CARLOADS 3

| Line No | | Base Yr 1982 | Est Sub 1982 | Proj Sub 1984 |
|---------|-----------------------------------|-----------------|-----------------|------------------|
| 1 | Frt Rev Orig/Term On Branch . . . | \$ 1897 | \$ 1897 | \$ 1994 |
| 2 | All Other Rev and Income. . . . | 0 | 0 | 0 |
| 3 | Total Revenues Attributable . . . | 1897 | 1897 | 1994 |
| 4a | Maint. of Way & Structures. . . . | 1457 | 1457 | 1669 |
| b | Maintenance of Equipment. . . . | 90 | 90 | 93 |
| c | Transportation. | 229 | 229 | 245 |
| d | General Administration. | 0 | 0 | 0 |
| e | Freight Car Costs | 89 | 89 | 92 |
| f | Revenue Taxes | 0 | 0 | 0 |
| g | Property Taxes. | 0 | 0 | 0 |
| | Total On-Branch Costs | 1865 | 1865 | 2099 |
| 5 | Off Branch Costs. | 2470 | 2470 | 2673 |
| 6 | Total Avoidable Costs | 4335 | 4335 | 4772 |
| | Subsidization Costs | ////////// | | |
| 7 | Rehabilitation. | ////////// | 42843 | 42843 |
| 8 | Administrative Costs. | ////////// | 114 | 120 |
| 9 | Casualty Reserve Account. . . . | ////////// | 11 | 12 |
| 10 | Total Subsidization Costs . . . | ////////// | 42968 | 42975 |
| | Return on Valuation | ////////// | | |
| 11a | Working Capital | ////////// | 74 | 84 |
| b | Net Salvage Value | ////////// | 0 | 0 |
| c | Estimated Value of Real Estate. . | ////////// | 0 | 0 |
| | Total Valuation of Property . . | ////////// | 74 | 84 |
| 12 | Rate of Return. | ////////// | 17.7% | 17.7% |
| 13 | Total Return on Value | ////////// | 13 | 15 |
| 14a | Avoidable Loss From Operations. . | 2438 | ////////// | ////////// |
| b | Opportunity Costs | 560 | ////////// | ////////// |
| c | Total Avoidable Loss. | 2998 | ////////// | ////////// |
| 15 | Estimated Subsidy | ////////// | 45419 | 45768 |
| | (lines 6, 10 and 13 less line 3) | ////////// | ===== | ===== |

Date computed: December 28, 1983

Exhibit C, page 1 of 2

Consolidated Rail Corporation
Application for Abandonment

Docket AB-167
Sub No. 572 N

EXHIBIT C
REVENUE AND COST DATA

SMALLMAN STREET TRACK

(Approx. M.P. 0.0) to (Approx. M.P. 0.3)

Revenue and Cost Data calculated using the cost methodologies and standards prescribed by 49 CFR, Part 1121, as modified by the Commission in Finance Docket 29623.

| LINE NO | FOOTNOTES |
|---------|---|
| 4F | Conrail pays no state revenue taxes as a result of an exemption from such taxes provided to Conrail by Section 217 (c) of the Regional Rail Reorganization Act of 1973, as amended by the Northeast Rail Service Act of 1981. |
| 4G | Conrail pays no state-levied property taxes as a result of an exemption from such taxes provided to Conrail by Section 217 (c) of the Regional Rail Reorganization Act of 1973, as amended by the Northeast Rail Service Act of 1981. Conrail continues to pay property taxes levied by political subdivisions of States, as such taxes are not subject to the exemption. |
| 7 | Rehabilitation required during first subsidy year only. Five year rehabilitation is estimated at \$ <u>42,843</u> . |
| 11B | See Exhibit D (Estimated Net Liquidation Value) of this application for an explanation of the basis for establishing the Net Salvage Value. |
| 11C | See Exhibit D (Estimated Net Liquidation Value) of this application for an explanation of the basis for establishing the Estimated Value of Real Estate. |

WINDOW 11 APPRAISAL REPORTS

| ST Line Name | Line Code | Milepost From | Milepost To | RE Reg | NIR Date | Sub No | Appr Recd | ROW | Area (acres) Parcels | Total | Appraised Value (\$) | ROW | Parcels | Total | Name of Appraiser | Title % fee | Value to JWD |
|----------------------|-----------|---------------|-------------|--------|----------|--------|-----------|-----|----------------------|-------|----------------------|-----|---------|-------|-------------------|-------------|--------------|
| PA Smallman St. 2229 | | 0.0 | 0.3 | | 10/8 | 572 | | | | | | | | | | | 0 |
| Track | | | | | | | | | | .87 | | | | | | | 0 |

Track lies in middle of Smallman Street.

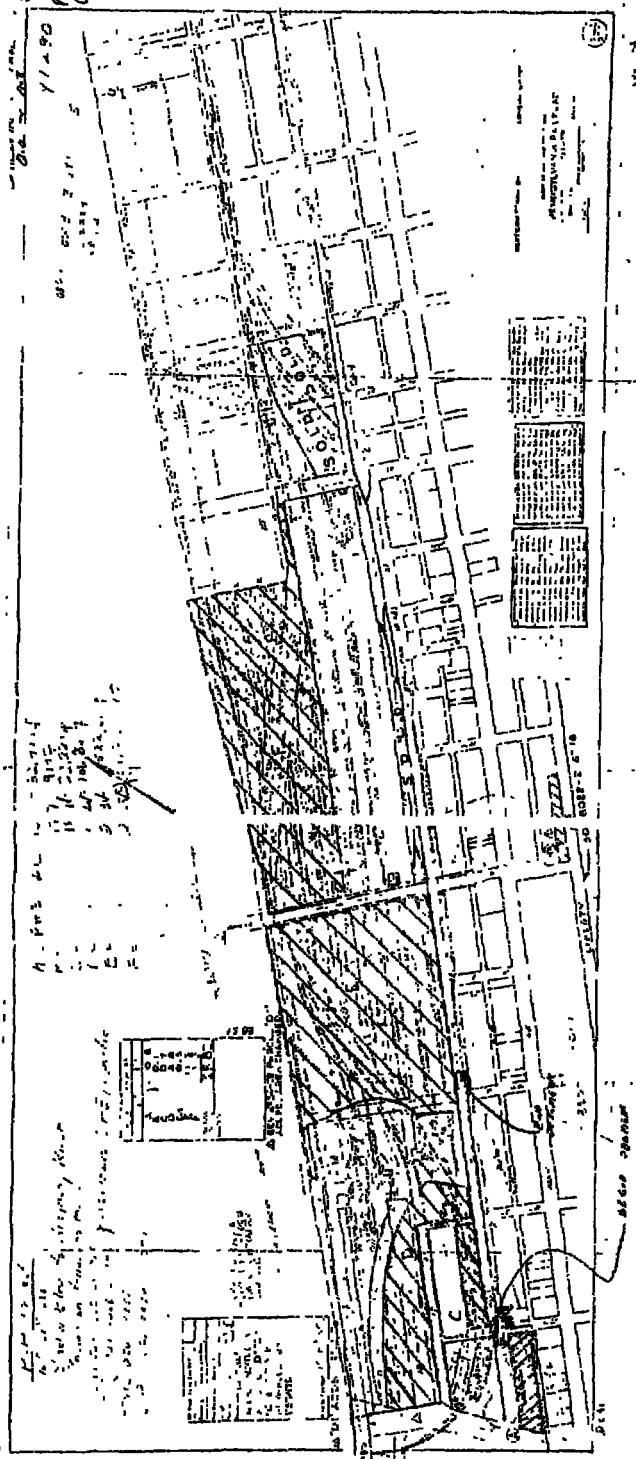


Exhibit B

AIL

cc - R. D. Cohen - F
E. C. Molengraft
D. E. Yerks
J. T. Orsborn
T. J. Hieber
from
G. M. Williams, Jr.
6-6-84

May 23, 1984

Mr. James H. Bayne
Acting Secretary
Interstate Commerce Commission
Room 1312
12th and Constitution Avenues, NW
Washington, DC 20423

Re: Application Under Section 308(c) of the Regional
Rail Reorganization Act of 1973, as enacted by
Section 1156 of the Northeast Rail Service Act of
1981, for abandonment of a Portion of the
Smallman Street Track in Allegheny County,
Pennsylvania
Docket No. AB 167 (Sub No. 571N)

Dear Mr. Bayne:

Enclosed for filing with the Commission are the original
and six copies of the above described application. This
application is submitted under Section 308(c) of the Regional
Rail Reorganization Act of 1973, as enacted by Section 1156
of the Northeast Rail Service Act of 1981. Notice of Insuf-
ficient Revenue was filed October 5, 1983.

Copies of the application have been served on the
shippers and other persons designated on the attachment to
this letter.

Please stamp and return the enclosed extra copy of this
letter to acknowledge receipt.

Very truly yours,

Charles E. Mechem
Charles E. Mechem *cem*
Senior General Attorney
1138 Six Penn Center Plaza
Philadelphia, PA 19103
(215) 977-5017

CEM/km

Enclosures

May 23, 1984
Page 2

cc: The Honorable Richard L. Thornburgh
Governor, Commonwealth of Pennsylvania
State Capitol
Harrisburg, PA 17120

Pennsylvania DOT
1200 Transportation and Safety Building
Harrisburg, PA 17120

Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17120

Rail Services Planning Office
12th and Constitution Avenues, NW
Washington, DC 20423

Harry C. Dennis
Office of Federal Assistance
(RFA-23)
Federal Railroad Administration
400 Seventh Street, SW
Washington, DC 20036

Mr. Wayne A. Michel
Office of Proceedings
Interstate Commerce Commission
12th & Constitution Avenue, NW
Washington, DC 20423

Director, Extension Service
Dr. J.M. Beattie
Agrl. Administration Bldg.
Pennsylvania State University
University Park, Pa. 16802

Bureau of Outdoor Recreation
U.S. Dept. of Interior
18th & Constitution, NW
Washington, DC 20240

Office of the Special Counsel
Interstate Commerce Commission
Washington, DC 20423

May 23, 1984
Page 3

Military Traffic Management
Command - Nassif Building - Room 720
STOP 105 MT-SA
Washington, DC 20315

National Railroad Passenger Corporation
400 North Capitol Street, NW
Washington, DC 20001

Railroad Retirement Board
844 North Rush Street
Chicago, IL 60611

Railway Labor Executives Association
Railway Labor Building
400 1st Street, NW
Washington, DC 20001

William B. Parker
Chief, Market Planning
U. S. R. A.
955 L'Enfant Plaza, North - SW
Washington, DC 20595

Mr. Steve Branca
Department of City Planning
Public Safety Building
Pittsburgh, PA 15219

Davidow & Sons Co.
26th and Smallman Street
Pittsburgh, PA 15222

May 23, 1984
Page 4

bcc: L. S. Crane
S. M. Reed
A. Schimmel
J. A. Hagen
R. B. Hasselman
B. B. Wilson
W. B. Newman, Jr.
C. N. Marshall
R. W. Garbett (Attn: Saul Resnick)
C. W. Owens
R. F. Bush
J. F. Folk
L. A. Huff
D. W. Mattson
J. E. Musslewhite
G. M. Williams, Jr.
A. T. Lewis
C. E. Wogan
W. H. Sheppard
R. von dem Hagen
V. H. Green
K. L. MacKavanagh
J. A. Sees
J. E. Sandefur
J. W. Dietz
B. J. Gordon
J. T. Sullivan
E. H. Follweiler
R. E. Gratz

BEFORE THE
INTERSTATE COMMERCE COMMISSION

| | | |
|------------------------------------|---|-------------------|
| APPLICATION OF CONSOLIDATED RAIL | : | DOCKET NO. AB 167 |
| CORPORATION PURSUANT TO SECTION | : | (SUB NO. 571N) |
| 308(c) OF THE REGIONAL RAIL REOR- | : | |
| GANIZATION ACT OF 1973, AS AMENDED | : | |
| BY SECTION 1156 OF THE NORTHEAST | : | |
| RAIL SERVICE ACT OF 1981, FOR | : | |
| APPROVAL OF THE ABANDONMENT OF | : | |
| A PORTION OF THE SMALLMAN STREET | : | |
| TRACK IN ALLEGHENY COUNTY, | : | |
| PENNSYLVANIA | : | |

Charles E. Mechem
General Attorney
Consolidated Rail Corporation
1138 Six Penn Center Plaza
Philadelphia, PA 19103
(215) 977-5017

May 23, 1984

BEFORE THE
INTERSTATE COMMERCE COMMISSION

| | | |
|------------------------------------|---|-------------------|
| APPLICATION OF CONSOLIDATED RAIL | : | DOCKET NO. AB 167 |
| CORPORATION PURSUANT TO SECTION | : | (SUB NO. 571N) |
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| RAIL SERVICE ACT OF 1981, FOR | : | |
| APPROVAL OF THE ABANDONMENT OF | : | |
| A PORTION OF THE SMALLMAN STREET | : | |
| TRACK IN ALLEGHENY COUNTY, | : | |
| PENNSYLVANIA | : | |

TO THE INTERSTATE COMMERCE COMMISSION, WASHINGTON, DC:

1. The name of applicant is Consolidated Rail Corporation (Conrail). Correspondence relating to this application should be addressed to Charles E. Mechem, General Attorney, 1138 Six Penn Center, Philadelphia, Pennsylvania 19103.

2. Applicant is a common carrier by railroad subject to the Northeast Rail Service Act of 1981 (NERSA).

3. Conrail files this application pursuant to Section 308(c) of the Regional Rail Reorganization Act of 1973 (RRR Act), as amended by Section 1156 of NERSA. A copy of said statute is attached hereto as Exhibit A.

4. By this application Conrail requests the Commission's approval of the abandonment of the line of rail

approximately 0.59 mile in length described below and situated in Allegheny County, Pennsylvania:

A portion of the Smallman Street Track in Pittsburgh from a point (approximately Milepost 0.71) south of 22nd Street to a point (approximately Milepost 1.3) south of 29th Street.

The above-described line will hereafter be referred to as the Subject Line.

5. Attached as Exhibit B is a map showing the location of the Subject Line.

6. Attached hereto as Exhibit C is a summary, or condensed statement, based on the most recent studies available to Conrail, setting forth (a) "revenues attributable," (b) an estimate of avoidable costs for the Subject Line, and (c) an estimate of the subsidy that would be required to keep the line in operation. Exhibit C includes an estimate of the cost of the work that would be required to preserve the Subject Line in FRA Class 1 condition. Attached hereto as Exhibit D is an estimate of the value of the Subject Line, including the real estate value of the underlying right-of-way. Pursuant to Section 308(d) of the RRR Act the aforesaid revenue, cost, and subsidy information and valuation estimate will be furnished, on request, to any responsible person other than a recipient of this application who seriously desires to consider making an offer of financial assistance.

7. Within fifteen days after the filing of this application, persons desiring a more detailed statement setting forth the basis upon which the subsidy estimate was calculated, may request such information in writing. Such detailed statement will be furnished within fifteen days after receipt of the request.

8. Finally, if a financially qualified person seriously considering purchase of the Subject Line submits a request received by Conrail within 15 days after the date of filing of this application, Conrail, within 45 days after the request, will provide an appraisal of the real estate value of the line, together with any adjustments to the estimated subsidy that may be necessitated by the appraisal.

9. All requests for information specified above as well as offers of financial assistance should be made in writing to C. E. Mechem, Room 1138 Six Penn Center, Philadelphia, PA 19103. Copies of such requests and offers, including the applicable docket number, should be sent to the Office of the Secretary, Case Control Branch, Room 1312, Interstate Commerce Commission, Washington, DC 20423. The following notation should be typed in bold face type at the lower left hand corner of envelopes containing offers: "Rail Section AB-OFA."

10. Recipients of this application are advised that any person requesting information or assistance with respect to the abandonment provisions of the Northeast Rail Service Act or the requirements and procedures governing offers of financial assistance (including proof of financial responsibility) may contact the ICC Office of Proceedings, Rail Section (telephone 202-275-7245).

WHEREFORE, Applicant requests that the Commission, within 90 days after the filing hereof, approve the abandonment of the Subject Line identified in Paragraph 4 above.

Respectfully submitted,

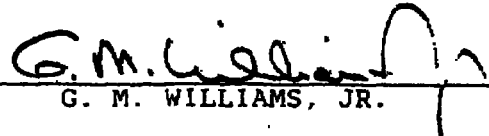
Charles E. Mechem

Charles E. Mechem
General Attorney *km*
1138 Six Penn Center Plaza
Philadelphia, PA 19103
(215) 977-5017

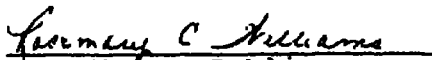
VERIFICATION

COMMONWEALTH OF PENNSYLVANIA :
: SS
COUNTY OF PHILADELPHIA :

G. M. WILLIAMS, JR. makes oath and says that he is Assistant Vice President, Regional Market Development of Consolidated Rail Corporation, the applicant herein; that he has been authorized by proper corporate action on the part of said applicant to verify and file with the Interstate Commerce Commission the foregoing application; that he has general knowledge of the facts and matters relied upon in such application; and that all representations set forth therein are true and correct to the best of his knowledge, information and belief.


G. M. WILLIAMS, JR.

Sworn to and Subscribed :
before me this *22nd* day :
of *May*, 1984. :


Notary Public
Rosemary C. Williams
Notary Public, Phila., Pa. Co.
My Commission Expires May 2, 1987

APPENDIX A

SFC. 108 OF REGIONAL RAIL REORGANIZATION
ACT OF 1973 (45 U.S.C.A. 748)

EXCERPTS FROM 49 U.S.C.A. 10905

(1) Abandonment. The Corporation may, in accordance with the section, file with the Commission an application for a certificate of abandonment for any line which is part of the system of the Corporation. Any such application shall be governed by this section and shall not, except as specifically provided in this section, be subject to the provisions of chapter 109 of title 49, United States Code [49 USCS § 10901 et seq.]

(b) Application for abandonment. Any application for abandonment that is filed by the Corporation under this section before December 1, 1991, shall be treated by the Commission within 90 days after the date such application is filed unless, within such 90-day period, an offer of financial assistance is made in accordance with subsection (d) of this section with respect to the line to be abandoned.

(c) Notice of beneficial removal. (1) The Corporation may, prior to November 1, 1993, file with the Commission a notice of beneficial removal for any line which is part of the system of the Corporation.

(2) At any time after the 90-day period beginning with the filing of a notice of beneficial removal for a line, the Corporation may file an application for abandonment for such line. An application for abandonment that is filed by the Corporation under this subsection for a line for which a notice of beneficial removal was filed under paragraph (1) shall be treated by the Commission within 90 days after the date such application is filed unless, within such 90-day period, an offer of financial assistance is made in accordance with subsection (d) of this section with respect to such line.

(d) Offers of financial assistance. (1) The provisions of section 10904(d)-(f) of title 49, United States Code [49 USCS § 10904(d)-(f)] (including the timing requirements of subsection (d) thereof), shall apply to any offer of financial assistance under subsection (b) or (c) of this section.

(2) The Corporation shall provide any person that intends to make an offer of financial assistance under subsection (b) or (c) of this section with such information as the Commission may require.

(e) Liquidation. (1) If any application for abandonment is granted under subsection (b) of this section, the Commission shall, as soon as practicable, appraise the net liquidation value of the line to be abandoned, and shall publish notice of such appraisal in the Federal Register.

(2) Appraisal made under paragraph (1) shall not be appealable.

(3)(A) If, within 120 days after the date on which an appraisal is published in the Federal Register under paragraph (1), the Corporation moves to have the offer for the sale, for 75 percent of the amount of which the liquidation value of such line was appraised by the Commission, of the line to be abandoned, the Corporation shall sell such line and the Commission shall, unless the parties otherwise agree, establish an equitable division of joint rates for through routes over such line.

(B) If the Corporation moves to have the offer under subparagraph (A), within such 120-day period, the Corporation may abandon or dispose of the line to be abandoned, except that the Corporation may not dismantle bridges, or other structures (not including rail, signals, and other rail facilities) for 30 days thereafter. The Secretary may require that bridges or other structures (not including rail, signals, and other rail facilities), and be dismantled for an additional 6 months if the issuance of liability of any sort related to such property.

(4) If the purchaser under paragraph (3)(A) of this subsection of any line of the Corporation abandons such line within five years after such purchase, the proceeds of any such liquidation shall be paid into the general fund of the Treasury of the United States.

(5) Employee protection. The provisions of section 10903(b)(1) of title 49, United States Code [49 USCS § 10903(b)(1)], shall not apply to any abandonment granted under this section. Any employee who was protected by the compensatory provisions of title V of this Act [former 45 USCS § 771 et seq.] immediately prior to the effective date of the National Rail Service Act of 1981, who is deprived of employment by such an abandonment shall be eligible for employee protection under section 701 of this Act [45 USCS § 771].

(d) If, within 15 days after the publication required in subsection (c) of this section, the Commission finds that—

(1) a financially responsible person (including a government authority) has offered financial assistance to enable the rail transportation to be continued over that part of the railroad line to be abandoned or over which all rail transportation is to be discontinued, and

(2) it is likely that the assistance would be equal to—

(A) the difference between the revenue attributable to that part of the railroad line and the available cost of providing rail freight transportation on the line, plus a reasonable return on the value of the line; or

(B) the acquisition cost of that part of the railroad line,

the Commission shall postpone the issuance of a certificate authorizing abandonment or discontinuance in accordance with subsections (4) and (5) of this section.

(e) If the carrier and a person offering financial assistance enter into an agreement which will provide continued rail service, the Commission shall postpone the issuance of the certificate for so long as the agreement, or an extension or modification of the agreement, is in effect. If the carrier and a person offering to purchase a line enter into an agreement which will provide continued rail service, the Commission shall approve the transaction and transmit the application for abandonment or discontinuance. If the carrier and a financially responsible person (including a government authority) fail to agree on the amount or terms of the primary or purchase, either party may, within 30 days after the offer is made, request that the Commission establish the conditions and amount of compensation. If no agreement is reached within 30 days after the offer is made and neither party requests that the Commission establish the conditions and amount of compensation during that same period, the Commission shall immediately issue a certificate authorizing the abandonment or discontinuance.

(f) Whenever the Commission is requested to establish the conditions and amount of compensation under this section—

(A) the Commission shall render its decision within 60 days,

(B) where subsidy has been offered, the Commission shall determine the amount and level of subsidy based on the available cost of providing continued rail transportation, plus a reasonable return on the value of the line; and

(C) where an offer of purchase has been made in order to continue rail service on the line, the Commission shall determine the price and other terms of sale. In no case shall the Commission set a price which is below the fair market value of the line (including, unless otherwise initially agreed, all facilities on the line or portion necessary to provide effective transportation services).

(3) The decision of the Commission shall be binding on both parties, except that the person who has offered to abandon or purchase the line may withdraw the offer within 10 days of the Commission's decision. In such a case, the Commission shall immediately issue a certificate authorizing the abandonment or discontinuance, unless other action is being considered pursuant to paragraph (3) of this subsection.

(4) If a carrier intends more than one offer to purchase or subsidize, it shall submit the offer with them. It wishes to transmit business, and complete the sale or subsidy agreement, or request that the Commission establish the conditions and amount of compensation prior to the 40th day after the date on which notice was published under subsection (c) of this section. If no agreement on subsidy or sale is reached within the 40-day period and the Commission has not been requested to establish the conditions and amount of compensation, any other offer may request that the Commission establish the conditions and amount of compensation. If the Commission has established the conditions and amount of compensation and the original offer has been withdrawn, any other offer may accept the Commission's decision within 30 days of such decision, and the Commission shall require the carrier to enter into a sale or subsidy agreement with such offer, if such sale or agreement incorporates the Commission's decision.

(4) No purchase of a line or portion of line sold under this section may transfer or discontinue service on such line prior to the end of the second year after consummation of the sale, and any such purchaser transfer such line, except to the carrier from whom it was purchased prior to the end of the fifth year after consummation of the sale.

(5) Any subsidy provided under this section may be discontinued on notice of 60 days. Unless, within such 60-day period, another financially responsible party enters into a subsidy agreement at least as beneficial to the carrier as that which was or was to be discontinued, the Commission shall, at the carrier's request, immediately issue a certificate authorizing the abandonment or discontinuance of service on the line.

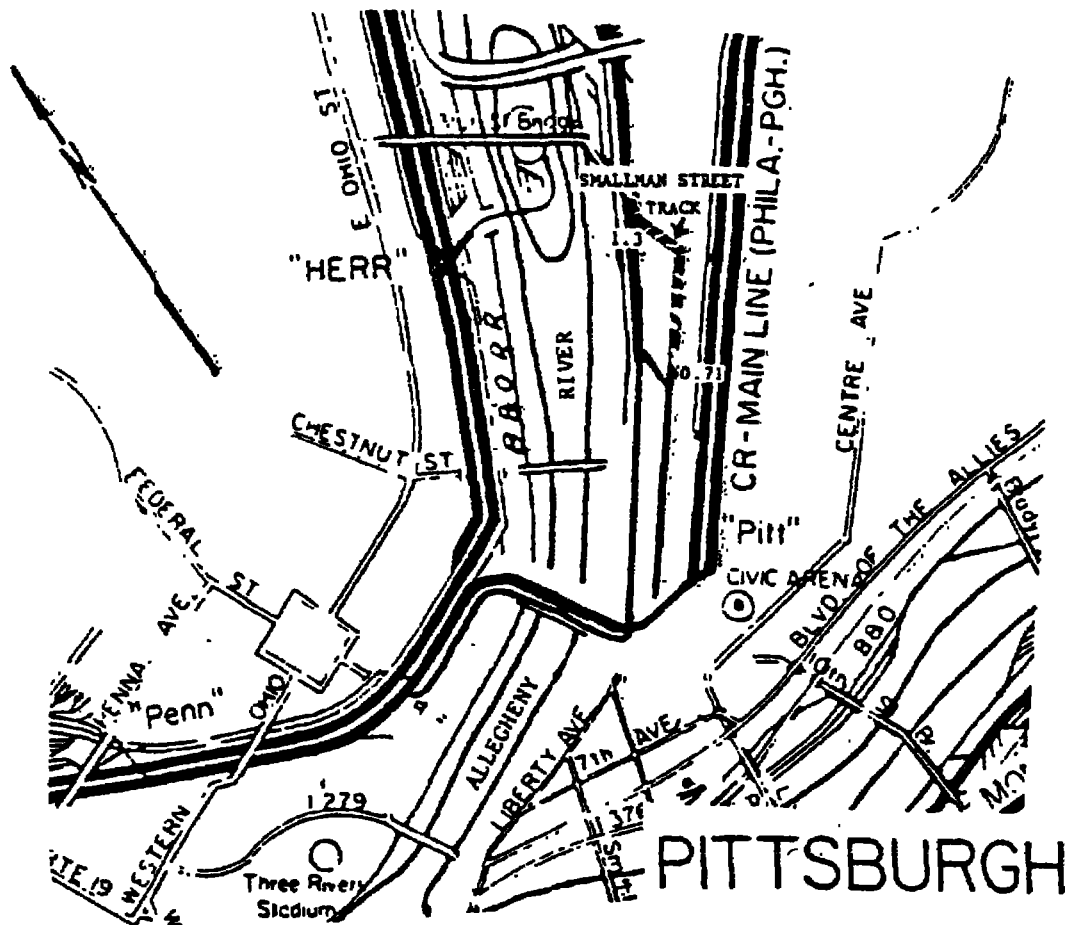
Consolidated Rail Corporation
Application for Abandonment

Docket AB-167
Sub No. 571 N

EXHIBIT B
LOCATION AND MAP

SMALLMAN STREET TRACK
At Pittsburgh
South of 22nd Street (Approx. M.P.0.71) to
South of 29th Street (Approx. M.P.1.3)

State(s): PA Counties: Allegheny



PROPOSED ABANDONMENT

Consolidated Rail Corporation
Application for Abandonment

ICC Docket No. 83-107 Sub No. 241-N

EXHIBIT CREVENUE AND COST DATASMALLMAN STREET TRACK

(Approx. M.P. 0.71) to (Approx. M.P. 1.3)

YEAR 1982 CARLOADS 21

| Line No. | | Base Yr 1982 | Est Sub 1982 | Proj Sub 1984 |
|-------------|---|-----------------|-----------------|------------------|
| 1 | Fit Rev Orig/Term On Branch . . . | \$ 15224 | \$ 15224 | \$ 16000 |
| 2 | All Other Rev and Income. . . . | 250 | 250 | 250 |
| 3 | Total Revenues Attributable . . . | 15474 | 15474 | 16250 |
| 4a | Maint. of Way & Structures. . . . | 4634 | 4634 | 5311 |
| b | Maintenance of Equipment. . . . | 681 | 681 | 709 |
| c | Transportation. | 1751 | 1751 | 1879 |
| d | General Administration. | 0 | 0 | 0 |
| e | Freight Car Costs | 990 | 990 | 1024 |
| f | Revenue Taxes | 0 | 0 | 0 |
| g | Property Taxes. | 0 | 0 | 0 |
| | Total On-Branch Costs | 8056 | 8056 | 8923 |
| 5 | Off Branch Costs. | 12105 | 12105 | 13098 |
| 6 | Total Avoidable Costs | 20161 | 20161 | 22021 |
| | Subsidization Costs | ////////// | | |
| 7 | Rehabilitation. | ////////// | 159859 | 159859 |
| 8 | Administrative Costs. | ////////// | 928 | 975 |
| 9 | Casualty Reserve Account. | ////////// | 143 | 159 |
| 10 | Total Subsidization Costs | ////////// | 160930 | 160993 |
| | Return on Valuation | ////////// | | |
| 11a | Working Capital | ////////// | 312 | 346 |
| b | Net Salvage Value | ////////// | 0 | 0 |
| c | Estimated Value of Real Estate. | ////////// | 8600 | 8600 |
| | Total Valuation of Property | ////////// | 8912 | 8946 |
| 12 | Rate of Return. | ////////// | 17.7% | 17.7% |
| 13 | Total Return on Value | ////////// | 1577 | 1583 |
| 14a | Avoidable Loss From Operations. | 4687 | ////////// | ////////// |
| b | Opportunity Costs | 3033 | ////////// | ////////// |
| c | Total Avoidable Loss. | 7720 | ////////// | ////////// |
| 15 | Estimated Subsidy | ////////// | 167194 | 168347 |
| | (lines 6, 10 and 13 less line 3) | ////////// | ===== | ===== |

Date computed: December 28, 1983

Exhibit C, page 1 of 2

Consolidated Rail Corporation
Application for Abandonment

Docket AB-167
Sub No. 571 N

EXHIBIT C
REVENUE AND COST DATA

SMALLMAN STREET TRACK
(Approx. M.P. 0.71) to (Approx. M.P. 1.3)

Revenue and Cost Data calculated using the cost methodologies and standards prescribed by 49 CFR, Part 1121, as modified by the Commission in Finance Docket 29623.

| LINE NO | <u>FOOTNOTES</u> |
|------------|---|
| 4F | Conrail pays no state revenue taxes as a result of an exemption from such taxes provided to Conrail by Section 217 (c) of the Regional Rail Reorganization Act of 1973, as amended by the Northeast Rail Service Act of 1981. |
| 4G | Conrail pays no state-levied property taxes as a result of an exemption from such taxes provided to Conrail by Section 217 (c) of the Regional Rail Reorganization Act of 1973, as amended by the Northeast Rail Service Act of 1981. Conrail continues to pay property taxes levied by political subdivisions of States, as such taxes are not subject to the exemption. |
| 7 | Rehabilitation required during first subsidy year only. Five-year rehabilitation is estimated at \$ <u>159,859</u> . |
| 11B | See Exhibit D (Estimated Net Liquidation Value) of this application for an explanation of the basis for establishing the Net Salvage Value. |
| 11C | See Exhibit D (Estimated Net Liquidation Value) of this application for an explanation of the basis for establishing the Estimated Value of Real Estate. |

Consolidated Rail Corporation
Application for Abandonment

Docket AB-167
Sub No. 571 N

EXHIBIT DESTIMATED NET LIQUIDATION VALUESMALLMAN STREET TRACK

(Approx. M.P. 0.71) to (Approx. M.P. 1.3)

| | | |
|-----|--|---------|
| 1. | Gross track salvage | \$ |
| 2. | Takeup costs: | |
| a. | Common track | |
| b. | Turn outs | |
| c. | Road crossing restoration | |
| 3. | Total takeup costs | |
| 4. | Net track salvage | |
| | (line 1 less line 3) | |
| 5. | Gross salvage - communications and signals | |
| 6. | Cost to remove | |
| 7. | Net communications and signal salvage | |
| | (line 5 less line 6) | |
| 8. | Net bridge and building salvage | |
| 9. | Total net salvage value | 0 |
| | (sum of lines 4, 7 and 8) | |
| 10. | Estimated value of underlying real estate | 8600 |
| 11. | Estimated Net Liquidation Value | \$ 8600 |
| | (line 9 plus line 10) | |

| Line No | FOOTNOTES |
|---------|---|
| 9 | Gross Salvage value exceeded by or equals the cost for removal. |
| 10 | Current appraised value. |
| 11 | The NLV stated in Line 11 may include the value of certain facilities which are not "necessary to provide effective transportation service," as that term is used in 49 USC § 10905(f)(1)(c) and which, moreover, Conrail would be at liberty to abandon without the approval of the Commission. Conrail reserves the right to exclude the aforesaid facilities, if any, from any sale or subsidy under Section 308 of the RRR Act and 49 USC § 10905 and will furnish the value thereof in any proceeding conducted under said Section to establish the terms and conditions of a sale or subsidy. |

Consolidated Rail Corporation
Application for AbandonmentDocket AB-167
Sub No. 571 NEXHIBIT DESTIMATED NET LIQUIDATION VALUESMALLMAN STREET TRACK

(Approx. M.P. 0.71) to (Approx. M.P. 1.3)

| | | |
|-----|---|---------|
| 1. | Gross track salvage | \$ |
| 2. | Takeup costs: | |
| a. | Common track | |
| b. | Turn outs | |
| c. | Road crossing restoration | |
| 3. | Total takeup costs | |
| 4. | Net track salvage | |
| | (line 1 less line 3) | |
| 5. | Gross salvage communications and signals | |
| 6. | Cost to remove | |
| 7. | Net communications and signal salvage | |
| | (line 5 less line 6) | |
| 8. | Net bridge and building salvage | |
| 9. | Total net salvage value | 0 |
| | (sum of lines 4, 7 and 8) | |
| 10. | Estimated value of underlying real estate | 8600 |
| 11. | Estimated Net Liquidation Value | \$ 8600 |
| | (line 9 plus line 10) | |

| Line No | FOOTNOTES |
|---------|---|
| 9 | Gross Salvage value exceeded by or equals the cost for removal. |
| 10 | Current appraised value. |
| 11 | The NLV stated in Line 11 may include the value of certain facilities which are not "necessary to provide effective transportation service," as that term is used in 49 USC § 10905(f)(1)(c) and which, moreover, Conrail would be at liberty to abandon without the approval of the Commission. Conrail reserves the right to exclude the aforesaid facilities, if any, from any sale or subsidy under Section 308 of the RRR Act and 49 USC § 10905 and will furnish the value thereof in any proceeding conducted under said Section to establish the terms and conditions of a sale or subsidy. |

CONRAIL



MEMORANDUM

G-4C New 12-82

DATE: July 1, 1985

TO: DISTRIBUTION

FROM: J. F. Betak

LOCATION: Rm. 1601 - 1528 Walnut St.

SUBJECT: Lines Cleared for Dismantling

The Smallman Street Track (Sub No. 571N) at Pittsburgh, PA from MP 0.71 to MP 1.3 is cleared for dismantling. This line was filed for abandonment on May 24, 1984 and approved by the ICC on August 31, 1984. The line was embargoed on March 5, 1985 and the 120-day date was December 29, 1984.

Please note that an approved AFE is required prior to physically dismantling the subject lines.

Before dismantling track or disposing of real estate, Messr. Gordon and Huff should comply with applicable state requirements regarding crossings and bridges as well as state requirements regarding the disposition of abandoned right-of-way.

- 2 -

DISTRIBUTION:

| | | |
|---------------------|---|---------------------------|
| L. Stanley Crane | - | 1838 Six Penn Center |
| S. M. Reed | - | 1846 Six Penn Center |
| C. N. Marshall | - | 1810 Six Penn Center |
| R. B. Hasselman | - | 1740 Six Penn Center |
| G. C. Woodward | - | 1534 Six Penn Center |
| B. B. Wilson | - | 1842 Six Penn Center |
| W. B. Newman, Jr. | - | 955 L'Enfant Plaza |
| S. Resnick | - | 1040 Six Penn Center |
| C. W. Owens | - | 1744 Six Penn Center |
| J. T. Whatmough | - | 401-1528 Walnut Street |
| J. F. Folk | - | 950 Six Penn Center |
| B. J. Gordon | - | 1640 Six Penn Center |
| L. A. Huff | - | 901-1528 Walnut Street |
| G. M. Williams, Jr. | - | 1238 Six Penn Center |
| J. T. Sullivan | - | 1200-15 N. 32nd Street |
| C. E. Wogan | - | 801-1528 Walnut Street |
| D. W. Mattson | - | 806 Six Penn Center |
| T. H. Ramsey | - | 1601-1528 Walnut Street |
| C. E. Mechem | - | 1138 Six Penn Center |
| J. E. Sandefur | - | 901-1528 Walnut Street |
| J. F. Jaeger | - | 901-1528 Walnut Street |
| J. J. Baffa | - | 1640 Six Penn Center |
| D. F. Donovan | - | 1138 Six Penn Center |
| W. G. Kemmerer | - | 1634 Six Penn Center |
| J. T. Orsborn | - | 1601-1528 Walnut Street |
| R. L. Teeter | - | 1640 Six Penn Center |
| W. G. Jones | - | 1101-15 North 32nd Street |
| L. E. Williams | - | 601-Six Penn Center |
| T. J. O'Brien | - | 1338-Six Penn Center |
| W. R. Oates | - | 1601-1528 Walnut Street |

cc: R. E. Gratz
C. A. Bassani
D. E. Yerks

CONRAIL

MEMORANDUM

file
Op. Comm.
3/4

DATE: February 13, 1985

TO: Operating Committee

FROM: G. M. Williams, Jr. Location: 1601-1528 Walnut St.

SUBJECT: Line Embargo Recommendation

OPERATING COMMITTEE APPROVAL

LINE NAME: Smallman Street Track *for abandonment 9-26-83 & 5-14-84*
LOCATION: Pittsburgh, PA RDBR NO. 22-2229
FROM MP/TERMINAL: 0.71; South of 22nd Street
TO MP/TERMINAL: 1.3; South of 29th Street
DATE FILED: 5/24/84; ICC SERVICE DATE: 8/31/84

CUSTOMERS ON LINE:

CARLOADS*

| | | 83 | 6 MO. 84 |
|------------------------|----------|----|----------|
| Davidow and Sons, Inc. | M.P. 1.0 | 2 | 1 |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |

* Abandonment decision based on 67 carloads in 1981.

STATION NO.

STATION NAME

| | |
|------|---------------------------------|
| 4727 | Pittsburgh 11th Street |
| 4733 | Pittsburgh, PA Produce Terminal |
| 4751 | Pittsburgh 29th Street |
| 4752 | Pittsburgh 34th Street |
| 4753 | Pittsburgh 43rd Street |

EMBARGO APPROVED: _____ DISAPPROVED (REASON) _____

Operating Committee Meeting Date: _____

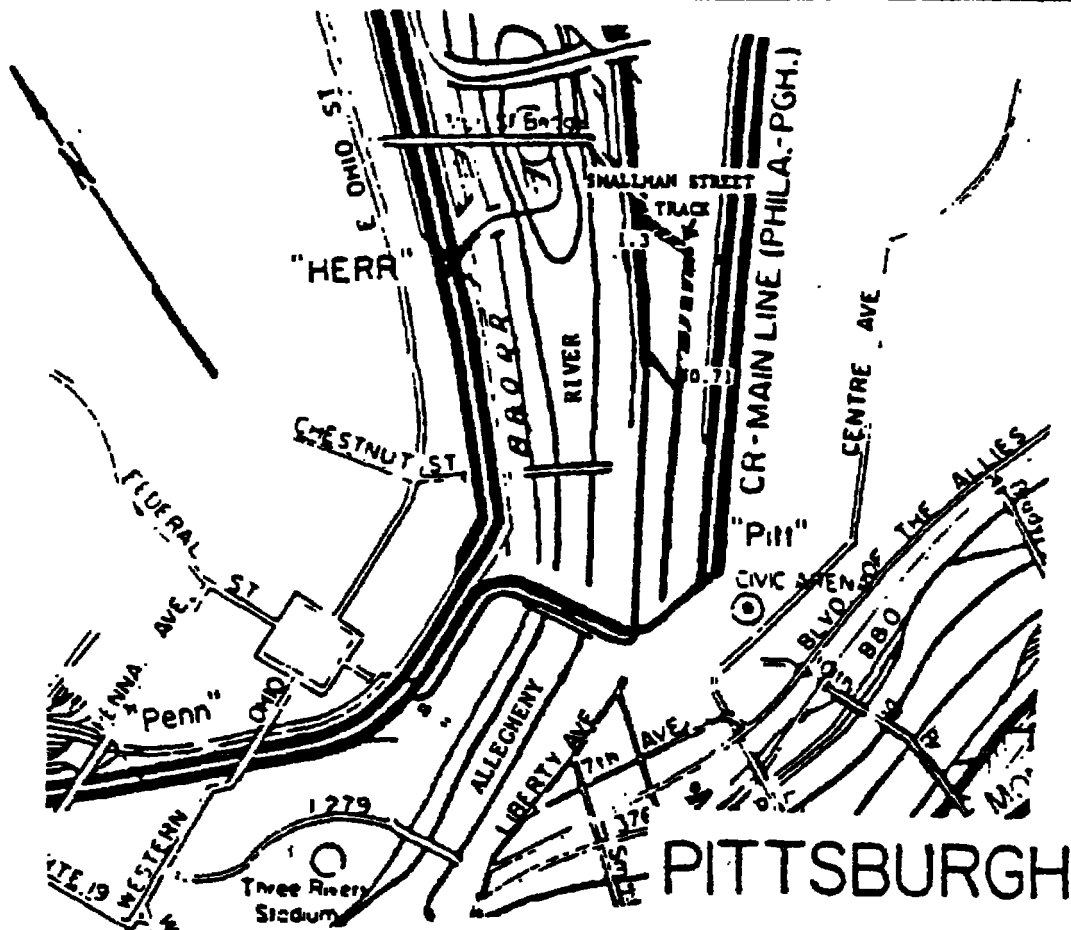
Application for Abandonment

Docket AB-167
Sub No. 571 N

EXHIBIT B
LOCATION AND MAP

SMALLMAN STREET TRACK
At Pittsburgh
South of 22nd Street (Approx. M.P.0.71) to
South of 29th Street (Approx. M.P.1.3)

State(s): PA Counties: Allegheny



PROPOSED ABANDONMENT

CONRAIL

MEMORANDUM



DATE: February 13, 1985

TO: Operating Committee

FROM: G. M. Williams, Jr. Location: 1601-1528 Walnut St.

SUBJECT: Line Embargo Recommendation

LINE NAME: Smallman Street Track SUB NO. 572N

LOCATION: Pittsburgh, PA RDBR NO. 22-2229

FROM MP/TERMINAL: 0.00 ; East of 11th Street

TO MP/TERMINAL: 0.30 ; East of 14th Street

DATE FILED: 5/24/84 ; ICC SERVICE DATE: 8/31/84

CUSTOMERS ON LINE:

CARLOADS*

| | | <u>83</u> | <u>6 MO. 84</u> |
|--------------------------|-----------------|-----------|-----------------|
| <u>Adelman Lumber</u> | <u>M.P. 0.2</u> | <u>1</u> | <u>0</u> |
| <u>Byrnes and Keefer</u> | <u>M.P. 0.0</u> | <u>0</u> | <u>0</u> |
| | | | |
| | | | |
| | | | |
| | | | |

* Abandonment decision based on 2 carloads in 1981.

STATION NO.

STATION NAME

| | |
|------|---------------------------------|
| 4727 | Pittsburgh 11th Street |
| 4733 | Pittsburgh, PA Produce Terminal |
| 4751 | Pittsburgh 29th Street |
| 4752 | Pittsburgh 34th Street |
| 4753 | Pittsburgh 43rd Street |

EMBARGO APPROVED: _____ DISAPPROVED (REASON) _____

Operating Committee Meeting Date: _____

dated Rail Corporation
Location for Abandonment

Docket AB-167
Sub No. 572 N

EXHIBIT B
LOCATION AND MAP

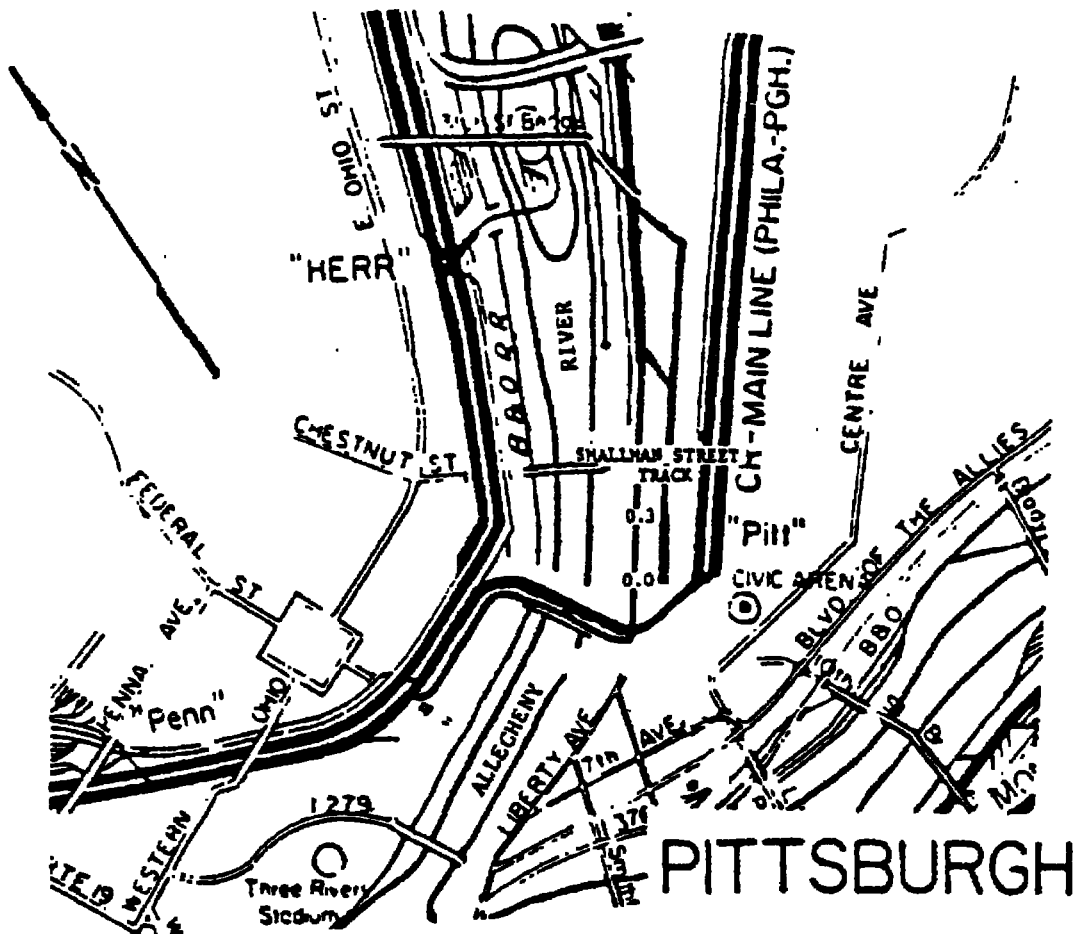
SHALLMAN STREET TRACK

At Pittsburgh

East Side of 11th Street (Approx. M.P. 0.0) to
East of 14th Street (Approx. M.P. 0.3)

State(s): PA

Counties: Allegheny



PROPOSED ABANDONMENT

CONRAIL

MEMORANDUM



DATE: February 13, 1985

TO: Operating Committee

FROM: G. M. Williams, Jr. Location: 1601-1528 Walnut St.

SUBJECT: Line Embargo Recommendation

LINE NAME: Smallman Street Branch SUB NO. 641N
LOCATION: Pittsburgh, PA. RDBR NO. 22-2229
FROM MP/TERMINAL: 0.30 ; Point East of 14th Street
TO MP/TERMINAL: 0.85 ; Point East of 24th Street
DATE FILED: 6/11/84 ; ICC SERVICE DATE: 9/10/84

CUSTOMERS ON LINE:

CARLOADS*

| | | <u>83</u> | <u>6 MO. 84</u> |
|---------------------------------|-----------------|------------|-----------------|
| <u>Produce Terminal</u> | <u>M.P. 0.7</u> | <u>181</u> | <u>55</u> |
| <u>New Federal Cold Storage</u> | <u>M.P. 0.6</u> | <u>6</u> | <u>20</u> |
| | | | |
| | | | |
| | | | |
| | | | |

* Abandonment decision based on 320 carloads in 1981.

STATION NO.

STATION NAME

| | |
|-------------|--|
| <u>4727</u> | <u>Pittsburgh 11th Street</u> |
| <u>4733</u> | <u>Pittsburgh, PA Produce Terminal</u> |
| <u>4751</u> | <u>Pittsburgh 29th Street</u> |
| <u>4752</u> | <u>Pittsburgh 34th Street</u> |
| <u>4753</u> | <u>Pittsburgh 43rd Street</u> |

EMBARGO APPROVED: _____ DISAPPROVED (REASON) _____

Operating Committee Meeting Date: _____

for Abandonment:

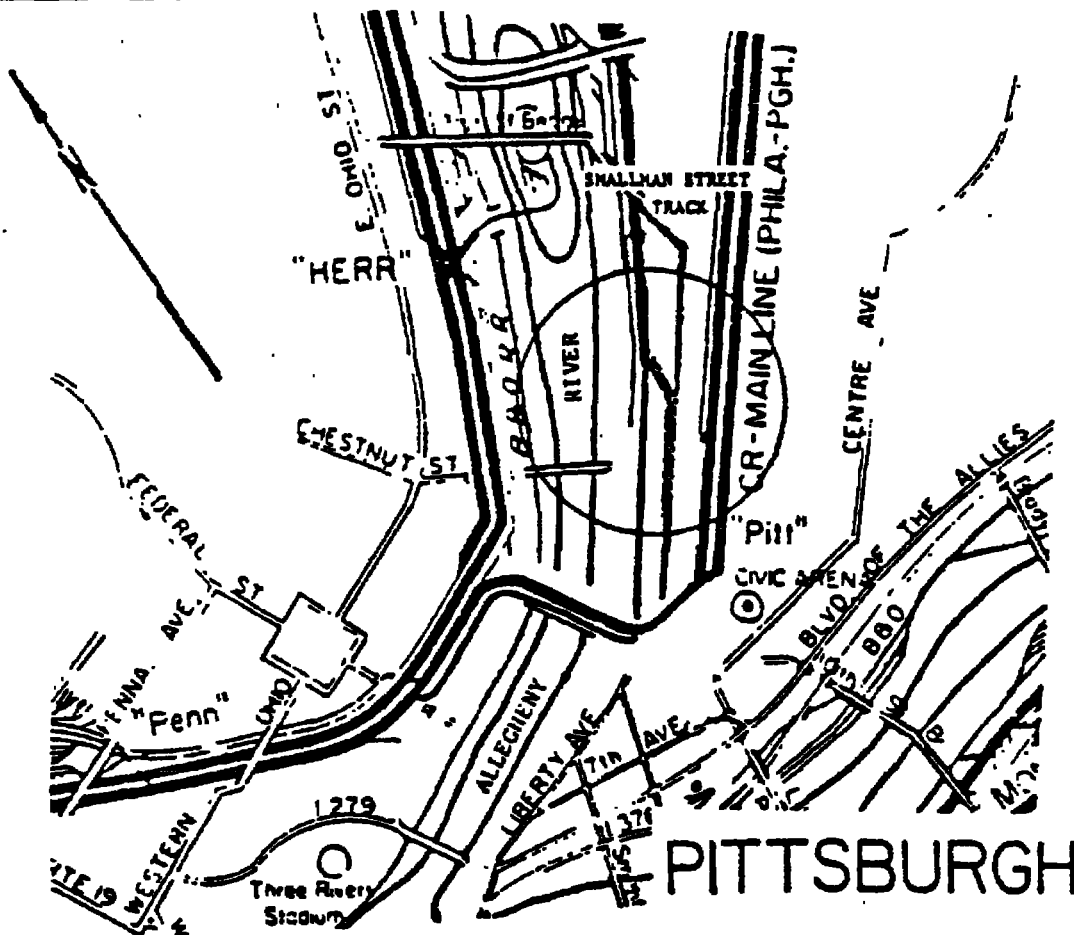
Sub No. 6-1N

EXHIBIT B.
LOCATION AND MAP

SMALLMAN STREET TRACK
In Pittsburgh
E. of 14th Street (Approx. M.P. 0.3) to
East of 24th Street (Approx. M.P. 0.85)

State(s): PA

Counties: Allegheny



PROPOSED ABANDONMENT ~~SMALLMAN STREET TRACK~~

CONRAIL

MEMORANDUM

8-4C Nov 12-82

DATE: May 14, 1984

TO: OPERATING COMMITTEE

FROM: G. M. Williams, Jr. *M* Rm. 1601, 1528 Walnut St.

SUBJECT: Smallman Street

RECOMMENDATION:

File an abandonment application on the Smallman Street track in downtown Pittsburgh as a follow-up to the NIR. Contribution from the Produce Terminal traffic does not cover rehabilitation expense. Conrail has proposed several options for continued service to the Produce Terminal, none of which is precluded by the abandonment filing.

BACKGROUND:

In October, 1983, Conrail filed a Notice of Insufficient Revenue on the Smallman Street track in downtown Pittsburgh (MP 0.2-0.8) reflecting non-contributory economics post-rehabilitation. The Operating Committee requested that they review the status of corrective action negotiations before approving the abandonment filing.

Segment represents 0.6 miles of track embeded in cobblestone streets of downtown Pittsburgh.

Updated decision data on the Produce Terminal (12-month period ending September 30, 1983) shows the following:

| | |
|------------|------------------|
| Carloads: | 163 |
| Revenue: | \$175,000 |
| Costs: | |
| On Branch | \$33,000 |
| Off Branch | \$139,000 |
| | <u>\$172,000</u> |

| | | |
|--------------|---------|------|
| Contribution | | |
| Pre-rehab. | \$3,000 | 1.02 |

Five-year rehabilitation estimates for the city street track range from \$100,000 to \$300,000.

Primary traffic is inbound produce moving to the Pittsburgh Produce Terminal via a track on the south side of the terminal. Produce traffic has been declining steadily with erosion to trailvan and truck. Recent negotiations with Pacific Fruit Growers Express may return an additional 70 carloads to the railroad. However, even at 233 carloads the contribution from the produce traffic would be \$4,000, an amount insufficient to cover the rehabilitation of the street railway.

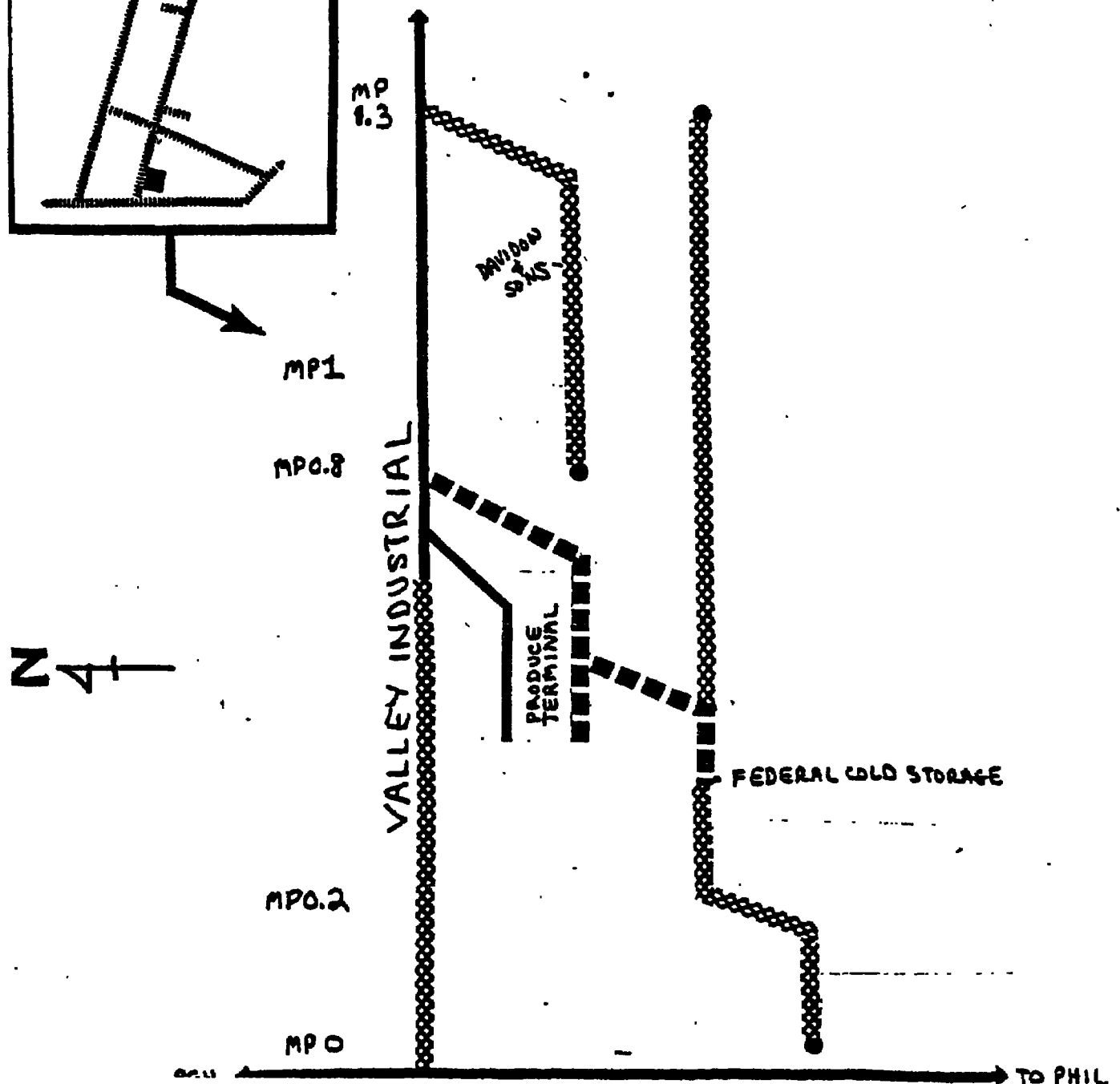
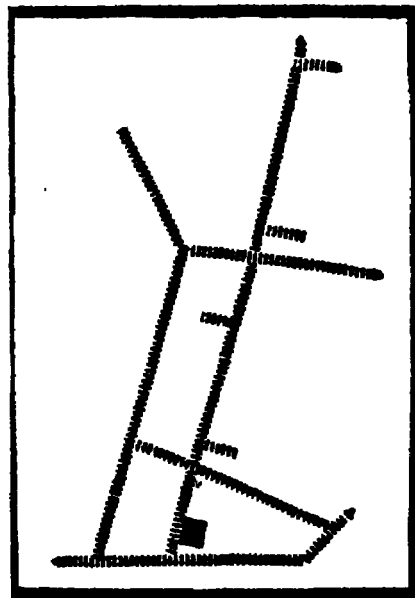
Conrail has met several times with the City of Pittsburgh, who owns the Produce Terminal, to explore alternatives for continued service. Currently, we have proposed three alternatives to the City:

1. Conrail would provide contract carrier service over the abandoned line subsequent to its purchase post-abandonment. New owner would be responsible for rehabilitation and track policing to relieve current street congestion.
2. City would reactivate track on the north side of the terminal where trucks now access the terminal. City owns property and would be responsible for rehabilitation.
3. If the Chessie is interested in purchasing the Smallman Street track, which we doubt Conrail would permit them to have overhead access to reach this track.

None of these alternatives is precluded by abandonment. The City is now evaluating their options and working with Conrail to bring the matter to successful conclusion.

SMALLMAN STREET AREA

KEY: ——— RETAIN
■■■■■ FILE ABANDON.
■■■■■ SUB 641
PRODUCE AREA
ABANDONMENT



RMD COMMENTS AND RECOMMENDATIONS -

PROPOSED LINE ABANDONMENTS

LINE DESCRIPTION:

STATE PA LINE NAME Smallman St.
RDBR FROM MP 0.3 East of 14th St.
TO MP 0.85 East of 24th St.

BACKGROUND:

Smallman St. Track, located in city streets in downtown Pittsburgh, generates contribution pre-rehabilitation but does not cover its long-term rehabilitation requirements.

In a previous Pittsburgh GBA presentation, we recommended:

- . completion of a detailed Engineering study to determine Conrail's long-term rehabilitation liability. (Previous rehabilitation estimate did not include any need to do any city street reconstruction work).
- . approaching Pittsburgh to seek rehabilitation financing.

Recommendation was based on argument that traffic, although somewhat unstable, was profitable, providing that Conrail had no major rehabilitation requirements. The major customer is the Produce Terminal located in a building which the City owns and recently reconstructed.

The Engineering study showed rehabilitation requirements to be \$305,000. City of Pittsburgh has recently been approached about purchasing the line (Conrail ownership of city street property is virtually nil) and funding any long-term rehabilitation. They are beginning to explore alternatives.

Economics (1981 traffic in 1982 000 dollars)

| <u>Cars</u> | <u>Rev</u> | <u>Cont.</u> | | <u>Ratio</u> | | <u>Rehab</u> | |
|-------------|------------|--------------|-------------|--------------|-------------|--------------|---------------|
| | | <u>Pre</u> | <u>Post</u> | <u>Pre</u> | <u>Post</u> | <u>5-Yr.</u> | <u>Annual</u> |
| 320 | \$400 | \$80 | (\$9) | 1.25 | 0.97 | 305 | \$89 |

RECOMMENDATIONS:

File NIR. Work closely with Pittsburgh City on capital funding alternatives in conjunction with continued service. Bring line back to Operating Committee before filing abandonment, if necessary.

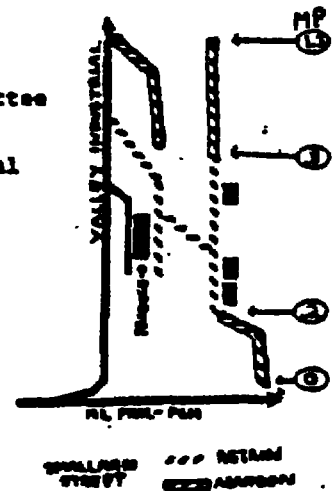
VALLEY INDUSTRIAL CLUSTER**Smallman Street****Background**

The Smallman St. area, served off the Lower Valley at MP 0.8, includes the Pittsburgh Produce Terminal and a food warehouse.

Railbed is located in cobblestone city streets. Central Region estimates long-term railbed reconstruction at \$350,000, although five-year rehabilitation estimate is only \$33,000.

Recommendations

1. Pursue long-term rehabilitation funding from City of Pittsburgh for tracks serving major customers.
2. If negotiations are unsuccessful, bring line back to Operating Committee for final review.
3. Abandon three track segments in Smallman St. area which serve minimal traffic and should be abandoned.



| Milepost | Miles | Cars | Rev | Contribution | | Rev/Cost | | Rehab | |
|-------------------|-------|------|-------|--------------|------|----------|------|-------|------|
| | | | | Pre | Post | Pre | Post | 5-Yr | Ann |
| Retains: 0.2-0.8 | .4 | 120 | \$400 | \$80 | \$70 | 1.25 | 1.31 | \$33 | \$10 |
| Abandons: 0.0-0.2 | .2 | 2 | 2 | (2) | (3) | .50 | .39 | 3 | 1 |
| 0.8-1.3* | .5 | 16 | 12 | (9) | (17) | .60 | .41 | 42 | 12 |

*Indicates route miles. Includes two separate pieces of track.

Source: Site-specific costing of 1981 traffic levels (or projections, where appropriate) in fourth quarter, 1982 dollars. Dollars are in thousands. Reference Appendix Pages 1-4.

Consolidated Rail Corporation
Application for Abandonment

ICC Docket AB-167 Sub No. 441 N

EXHIBIT C

REVENUE AND COST DATA

SHALLMAN STREET TRACK

YEAR 1982 CARLOADS 187

| Line No | | Base Yr 1982 | Est Sub 1982 | Proj Sub 1984 |
|---------|-----------------------------------|-----------------|-----------------|------------------|
| 1 | Frt Rev Orig/Term On Branch . . | \$ 173167 | \$ 173167 | \$ 181999 |
| 2 | All Other Rev and Income. . . . | 690 | 690 | 690 |
| 3 | Total Revenues Attributable . . | 173857 | 173857 | 182689 |
| 4a | Maint. of Way & Structures. . . | 3484 | 3484 | 3993 |
| b | Maintenance of Equipment. . . . | 2569 | 2569 | 2674 |
| c | Transportation. | 6762 | 6762 | 7262 |
| d | General Administration. | 0 | 0 | 0 |
| e | Freight Car Costs | 12214 | 12214 | 12629 |
| f | Revenue Taxes | 0 | 0 | 0 |
| g | Property Taxes. | 0 | 0 | 0 |
| | Total On-Branch Costs | 25029 | 25029 | 26558 |
| 5 | Off Branch Costs. | 266027 | 266027 | 287841 |
| 6 | Total Avoidable Costs | 291056 | 291056 | 314399 |
| | Subsidization Costs | ////////// | | |
| 7 | Rehabilitation. | ////////// | 211607 | 211607 |
| 8 | Administrative Costs. | ////////// | 10431 | 10961 |
| 9 | Casualty Reserve Account. . . . | ////////// | 1203 | 1339 |
| 10 | Total Subsidization Costs . . | ////////// | 223241 | 223907 |
| | Return on Valuation | ////////// | | |
| 11a | Working Capital | ////////// | 869 | 925 |
| b | Net Salvage Value | ////////// | 0 | 0 |
| c | Estimated Value of Real Estate. . | ////////// | 11650 | 11650 |
| | Total Valuation of Property . | ////////// | 12519 | 12575 |
| 12 | Rate of Return. | ////////// | 17.7% | 17.7% |
| 13 | Total Return on Value | ////////// | 2216 | 2226 |
| 14a | Avoidable Loss From Operations. . | 117199 | ////////// | ////////// |
| b | Opportunity Costs | 2598 | ////////// | ////////// |
| c | Total Avoidable Loss. | 119797 | ////////// | ////////// |
| 15 | Estimated Subsidy | ////////// | 342656 | 357843 |
| | (Lines 6, 10 and 13 less line 3) | ////////// | ===== | ===== |

Date computed: March 8, 1984

Exhibit C, page 1 of 2

WPC
10-12-83

WINDOW II APPRAISAL REPORTS

| ST Line Name | Line Code | Milepost From | Milepost To | RE Reg | NR Date | Sub No | Appr Recd | Area (acres) ROW | Area (acres) Total | Appraised Value (\$) ROW | Appraised Value (\$) Total | Name of Appraiser | Title % fee | Value to JNO |
|-----------------|-----------|---------------|-------------|--------|---------|--------|-----------|------------------|--------------------|--------------------------|----------------------------|-------------------|-------------|--------------|
| PA Smallman St. | 2229 | .71 | 1.3 | | 10/3 | 571 | | | .41 | | 8,600 | J.W. Latham | | |

The property from m.p. 0.71 to approximately m.p. 1.2 is in Smallman Street and has no real estate value. Acres and appraised value cover only property from m.p. 1.2 - 1.3.

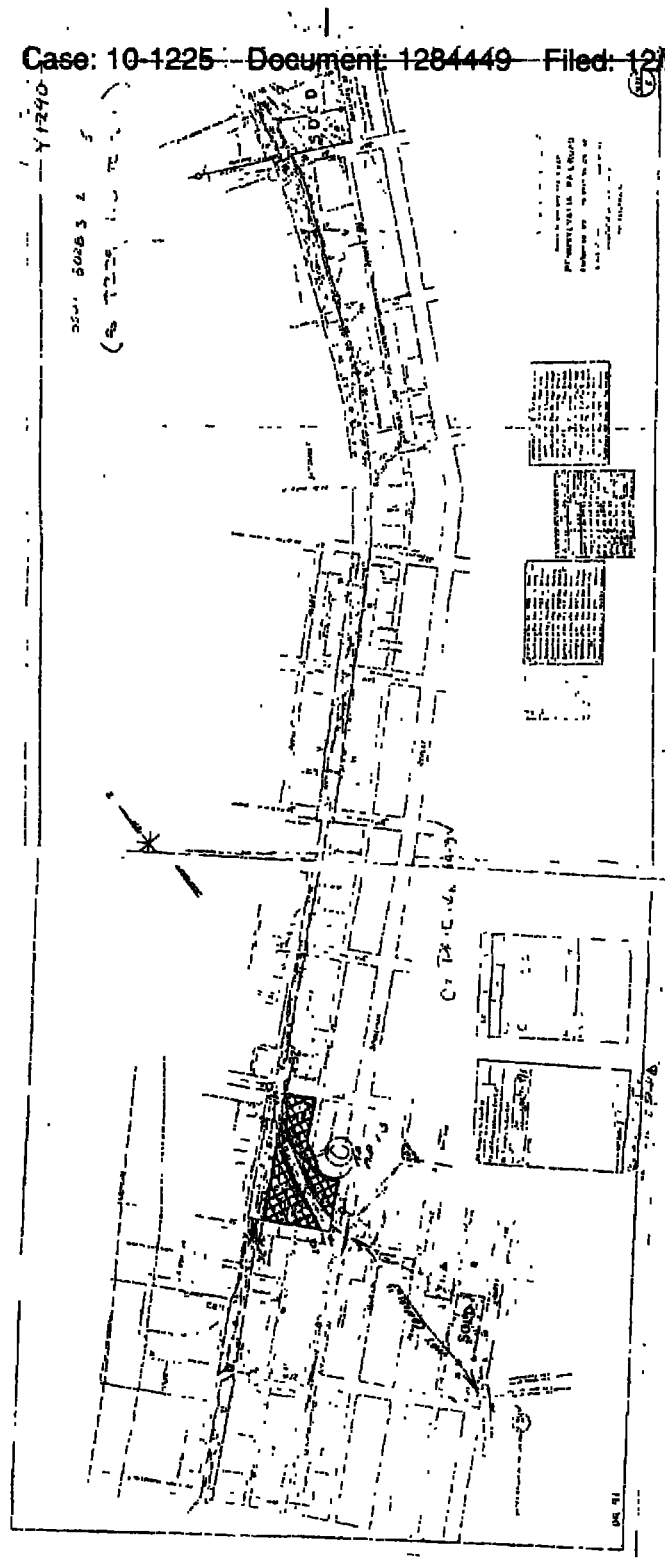


Exhibit C

CONRAIL



cc - R. D. Cohen - F
D. E. Yerks
E. C. Molengraft
J. T. Orsborn
T. J. Hieber
from
G. M. Williams, Jr.
6-12-84

June 8, 1984

Mr. James H. Bayne
Acting Secretary
Interstate Commerce Commission
Room 1312
12th and Constitution Avenues, NW
Washington, DC 20423

Re: Application Under Section 308(c) of the Regional
Rail Reorganization Act of 1973, as enacted by
Section 1156 of the Northeast Rail Service Act of
1981, for abandonment of the Smallman Street
Track in Allegheny County, Pennsylvania
Docket No. AB 167 (Sub No. 641N)

Dear Mr. Bayne:

Enclosed for filing with the Commission are the original
and six copies of the above described application. This
application is submitted under Section 308(c) of the Regional
Rail Reorganization Act of 1973, as enacted by Section 1156
of the Northeast Rail Service Act of 1981. Notice of Insuf-
ficient Revenue was filed October 31, 1983.

Copies of the application have been served on the
shippers and other persons designated on the attachment to
this letter.

Please stamp and return the enclosed extra copy of this
letter to acknowledge receipt.

Very truly yours,

Charles E. Mechem

Charles E. Mechem *km*
Senior General Attorney
1138 Six Penn Center Plaza
Philadelphia, PA 19103
(215) 977-5017

CEM/km

Enclosures

June 8, 1984
Page 2

cc: The Honorable Richard L. Thornburgh
Governor, Commonwealth of Pennsylvania
State Capitol
Harrisburg, PA 17120

Pennsylvania DOT
1200 Transportation and Safety Building
Harrisburg, PA 17120

Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17120

Rail Services Planning Office
12th and Constitution Avenues, NW
Washington, DC 20423

Harry C. Dennis
Office of Federal Assistance
(RFA-23)
Federal Railroad Administration
400 Seventh Street, SW
Washington, DC 20036

Mr. Wayne A. Michel
Office of Proceedings
Interstate Commerce Commission
12th & Constitution Avenue, NW
Washington, DC 20423

Director, Extension Service
Dr. J.M. Beattie
Agrl. Administration Bldg.
Pennsylvania State University
University Park, Pa. 16802

Bureau of Outdoor Recreation
U.S. Dept. of Interior
18th & Constitution, NW
Washington, DC 20240

Office of the Special Counsel
Interstate Commerce Commission
Washington, DC 20423

June 8, 1984
Page 3

Military Traffic Management
Command - Nassif Building - Room 720
STOP 105 MT-SA
Washington, DC 20315

National Railroad Passenger Corporation
400 North Capitol Street, NW
Washington, DC 20001

Railroad Retirement Board
844 North Rush Street
Chicago, IL 60611

Railway Labor Executives Association
Railway Labor Building
400 1st Street, NW
Washington, DC 20001

William B. Parker
Chief, Market Planning
U. S. R. A.
955 L'Enfant Plaza, North - SW
Washington, DC 20595

New Federal Cold Storage
1501 Penn Avenue
Pittsburgh, PA 15222

KML Sales, Inc.
16th & Smallman Streets
Pittsburgh, PA 15222

Consumers Produce Company
21st & Smallman Streets
Pittsburgh, PA 15222

J. E. Corcoran Company
Penna. Produce Terminal
Pittsburgh, PA 15222

Corso Potato Company
18th & Smallman Streets
Pittsburgh, PA 15222

June 8, 1984
Page 4

G&M Produce Company, Inc.
Catanzaro Building
Pittsburgh, PA 15222

Gullo Produce Company
21st & Smallman Streets
Pittsburgh, PA 15222

Golden Triangle Pack
21st and Smallman Streets
Pittsburgh, PA 15222

Stanford Seed Company
2530 Smallman Street
Pittsburgh, PA 15222

Pennsylvania Macaroni Company
2012 Penn Avenue
Pittsburgh, PA 15222

Benkovitz Seafoods
23rd & Smallman Streets
Pittsburgh, PA 15222

Mr. Steven Branca
Department of City Planning
Public Safety Building
Pittsburgh, PA 15219

Union Fruit Company
21st and Smallman Streets
Pittsburgh, PA 15222

Jeffrey A. PARKER
5224 42nd Street, NW
Washington, DC 20015

Richard Battaglia
c/o DeMassey and Manna
108 19th Street
Pittsburgh, PA 15222

June 8, 1984
Page 5

bcc: L. S. Crane
S. M. Reed
A. Schimmel
J. A. Hagen
R. B. Hasselman
B. B. Wilson
W. B. Newman, Jr.
C. N. Marshall
R. W. Garbett (Attn: Saul Resnick)
C. W. Owens
R. F. Bush
J. F. Folk
L. A. Huff
D. W. Mattson
J. E. Musslewhite
G. M. Williams, Jr.
A. T. Lewis
C. E. Wogan
W. H. Sheppard
R. von dem Hagen
V. H. Green
K. L. MacKavanagh
J. A. Sees
J. E. Sandefur
J. W. Dietz
B. J. Gordon
J. T. Sullivan
E. H. Follweiler
R. E. Gratz

BEFORE THE
INTERSTATE COMMERCE COMMISSION

| | | |
|------------------------------------|---|-------------------|
| APPLICATION OF CONSOLIDATED RAIL | : | DOCKET NO. AB 167 |
| CORPORATION PURSUANT TO SECTION | : | (SUB NO. 641N) |
| 308(c) OF THE REGIONAL RAIL REOR- | : | |
| GANIZATION ACT OF 1973, AS AMENDED | : | |
| BY SECTION 1156 OF THE NORTHEAST | : | |
| RAIL SERVICE ACT OF 1981, FOR | : | |
| APPROVAL OF THE ABANDONMENT OF | : | |
| THE SMALLMAN STREET BRANCH IN | : | |
| ALLEGHENY COUNTY, PENNSYLVANIA | : | |

Charles E. Mechem
General Attorney
Consolidated Rail Corporation
1138 Six Penn Center Plaza
Philadelphia, PA 19103
(215) 977-5017

June 8, 1984

BEFORE THE
INTERSTATE COMMERCE COMMISSION

APPLICATION OF CONSOLIDATED RAIL : DOCKET NO. AB 167
CORPORATION PURSUANT TO SECTION : (SUB NO. 641N)
308(c) OF THE REGIONAL RAIL REOR- :
GANIZATION ACT OF 1973, AS AMENDED :
BY SECTION 1156 OF THE NORTHEAST :
RAIL SERVICE ACT OF 1981, FOR :
APPROVAL OF THE ABANDONMENT OF :
THE SMALLMAN STREET BRANCH IN :
ALLEGHENY COUNTY, PENNSYLVANIA :

TO THE INTERSTATE COMMERCE COMMISSION, WASHINGTON, DC:

1. The name of applicant is Consolidated Rail Corporation (Conrail). Correspondence relating to this application should be addressed to Charles E. Mechem, General Attorney, 1138 Six Penn Center, Philadelphia, Pennsylvania 19103.

2. Applicant is a common carrier by railroad subject to the Northeast Rail Service Act of 1981 (NERSA).

3. Conrail files this application pursuant to Section 308(c) of the Regional Rail Reorganization Act of 1973 (RRR Act), as amended by Section 1156 of NERSA. A copy of said statute is attached hereto as Exhibit A.

4. By this application Conrail requests the Commission's approval of the abandonment of the line of rail,

approximately 0.55 mile in length, described below and situated in Allegheny County, Pennsylvania:

The Smallman Street Branch in Pittsburgh from a point east of 14th Street (approximately Milepost 0.3) to a point east of 24th Street (approximately Milepost 0.85).

The above-described line will hereafter be referred to as the Subject Line.

5. Attached as Exhibit B is a map showing the location of the Subject Line.

6. Attached hereto as Exhibit C is a summary, or condensed statement, based on the most recent studies available to Conrail, setting forth (a) "revenues attributable," (b) an estimate of avoidable costs for the Subject Line, and (c) an estimate of the subsidy that would be required to keep the line in operation. Exhibit C includes an estimate of the cost of the work that would be required to preserve the Subject Line in FRA Class 1 condition. Attached hereto as Exhibit D is an estimate of the value of the Subject Line, including the real estate value of the underlying right-of-way. Pursuant to Section 308(d) of the RRR Act the aforesaid revenue, cost, and subsidy information and valuation estimate will be furnished, on request, to any responsible person other than a recipient of this application who seriously desires to consider making an offer of financial assistance.

7. Within fifteen days after the filing of this application, persons desiring a more detailed statement setting forth the basis upon which the subsidy estimate was calculated, may request such information in writing. Such detailed statement will be furnished within fifteen days after receipt of the request.

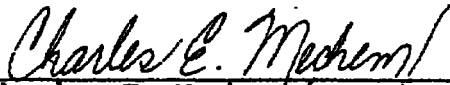
8. Finally, if a financially qualified person seriously considering purchase of the Subject Line submits a request received by Conrail within 15 days after the date of filing of this application, Conrail, within 45 days after the request, will provide an appraisal of the real estate value of the line, together with any adjustments to the estimated subsidy that may be necessitated by the appraisal.

9. All requests for information specified above as well as offers of financial assistance should be made in writing to C. E. Mechem, Room 1138 Six Penn Center, Philadelphia, PA 19103. Copies of such requests and offers, including the applicable docket number, should be sent to the Office of the Secretary, Case Control Branch, Room 1312; Interstate Commerce Commission, Washington, DC 20423. The following notation should be typed in bold face type at the lower left hand corner of envelopes containing offers: "Rail Section AB-OFA."

10. Recipients of this application are advised that any person requesting information or assistance with respect to the abandonment provisions of the Northeast Rail Service Act or the requirements and procedures governing offers of financial assistance (including proof of financial responsibility) may contact the ICC Office of Proceedings, Rail Section (telephone 202-275-7245).

WHEREFORE, Applicant requests that the Commission, within 90 days after the filing hereof, approve the abandonment of the Subject Line identified in Paragraph 4 above.

Respectfully submitted,


Charles E. Mechem
General Attorney *pm*
1138 Six Penn Center Plaza
Philadelphia, PA 19103
(215) 977-5017

VERIFICATION

COMMONWEALTH OF PENNSYLVANIA :
: SS
COUNTY OF PHILADELPHIA :

G. M. WILLIAMS, JR. makes oath and says that he is Assistant Vice President, Regional Market Development of Consolidated Rail Corporation, the applicant herein; that he has been authorized by proper corporate action on the part of said applicant to verify and file with the Interstate Commerce Commission the foregoing application; that he has general knowledge of the facts and matters relied upon in such application; and that all representations set forth therein are true and correct to the best of his knowledge, information and belief.



G. M. WILLIAMS, JR.

Sworn to and Subscribed :
before me this *5th* day :
of *June*, 1984. :



Notary Public
Rosemary C. Williams

Notary Public, Phila., Phila. Co.

My Commission Expires May 2, 1987

APPENDIX A

SEC. 308 OF NATIONAL RAIL REORGANIZATION
ACT OF 1973 (45 U.S.C.A. 748)

EXTRACTS FROM 49 U.S.C.A. 10905

(1) **Abandonment.** The Corporation may, in accordance with this section, file with the Commission an application for a certificate of abandonment for any line which is part of the system of the Corporation. Any such application shall be governed by this section and shall not, except as specifically provided in this section, be subject to the provisions of chapter 109 of title 49, United States Code [49 USC 10901 et seq.].

(b) **Application for abandonment.** Any application for abandonment that is filed by the Corporation under this section before December 1, 1981, shall be granted by the Commission within 90 days after the date such application is filed unless, within such 90-day period, an order of financial assistance is made in accordance with subsection (d) of this section with respect to the line to be abandoned.

(c) **Notice of beneficial reversion.** (1) The Corporation may, prior to November 1, 1981, file with the Commission a notice of beneficial reversion for any line which is part of the system of the Corporation.

(2) At any time after the 90-day period beginning with the filing of a notice of financial assistance for a line, the Corporation may file an application for abandonment for such line. An application for abandonment that is filed by the Corporation under this subsection for a line for which a notice of beneficial reversion was filed under paragraph (1) shall be granted by the Commission within 90 days after the date such application is filed unless, within such 90-day period, an order of financial assistance is made in accordance with subsection (d) of this section with respect to such line.

(d) **Order of financial assistance.** (1) The provisions of section 10904(d)-(f) of title 49, United States Code [49 USC 10904(d)-(f)] (including the timing requirements of subsection (d) thereof) shall apply to any order of financial assistance under subsection (b) or (c) of this section.

(2) The Corporation shall provide any person that intends to make an offer of financial assistance under subsection (b) or (c) of this section with such information as the Commission may require.

(e) **Liabilities.** (1) If any application for abandonment is granted under subsection (b) of this section, the Commission shall, as soon as practicable, appraise the net liquidation value of the line to be abandoned, and shall publish notice of such appraisal in the Federal Register.

(2) **Appraisals made under paragraph (1) shall not be appealable.**

(3)(A) If, within 120 days after the date on which an appraisal is published in the Federal Register under paragraph (1), the Corporation receives a bona fide offer for the sale, for 75 percent of the amount at which the liquidation value of such line was appraised by the Commission, of the line to be abandoned, the Corporation shall sell such line and the Commission shall, within the period otherwise agreed, establish an equitable division of joint rates for through routes over such line.

(B) If the Corporation receives no bona fide offer under subparagraph (A), within such 120-day period, the Corporation may abandon or dispose of the line as it chooses, except that the Corporation may not dismantle bridges, or other structures (not including rail, signals, and other rail facilities) for 120 days thereafter. The Secretary may require that bridges and other structures (not including rail, signals, and other rail facilities), not be dismantled for an additional 3 months if he determines all liability of any sort related to such property.

(4) If the purchaser under paragraph (3)(A) of this subsection of any line of the Corporation abandons such line within five years after such purchase, the proceeds of any such liquidation shall be paid into the general fund of the Treasury of the United States.

(f) **Employee protection.** The provisions of section 10901(j)(2) of title 49, United States Code [49 USC 10901(j)(2)], shall not apply to any abandonment granted under this section.

(g) **Any employee who was protected by the compensatory provisions of title V of this Act [former 45 USC 5571 et seq.] immediately prior to the effective date of the National Rail Service Act of 1981, who is deprived of employment by such an abandonment shall be eligible for employee protection under section 701 of this Act [45 USC 5571].**

(d) If, within 15 days after the publication required in subsection (c) of this section, the Commission finds that—

(1) a financially responsible person (including a government authority) has offered financial assistance to enable the rail transportation to be continued over that part of the railroad line to be abandoned or over which all rail transportation is to be discontinued; and

(2) it is likely that the assistance would be equal to—

(A) the difference between the revenues attributable to that part of the railroad line and the available cost of providing rail freight transportation on the line, plus a reasonable return on the value of the line; or

(B) the acquisition cost of that part of the railroad line,

the Commission shall postpone the issuance of a certificate authorizing abandonment or discontinuance in accordance with subsections (c) and (f) of this section.

(e) If the carrier and a person offering financial assistance enter into an agreement which will provide continued rail service, the Commission shall postpone the issuance of the certificate for so long as the agreement, or an extension or modification of the agreement, is in effect. If the carrier and a person offering to purchase a line enter into an agreement which will provide continued rail service, the Commission shall approve the transaction and dismiss the application for abandonment or discontinuance. If the carrier and a financially responsible person (including a government authority) fail to agree on the amount or terms of the subsidy or purchase, either party may, within 30 days after the offer is made, request that the Commission establish the conditions and amount of compensation. If no agreement is reached within 30 days after the offer is made and neither party requests that the Commission establish the conditions and amount of compensation during that same period, the Commission shall immediately issue a certificate authorizing the abandonment or discontinuance.

(f)(1) Whenever the Commission is requested to establish the conditions and amount of compensation under this section—

(A) the Commission shall render its decision within 60 days;

(B) where subsidy has been offered, the Commission shall determine the amount and term of subsidy based on the available cost of providing continued rail transportation, plus a reasonable return on the value of the line; and

(C) where an offer of purchase has been made in order to continue rail service on the line, the Commission shall determine the price and other terms of sale. In no case shall the Commission set a price which is below the fair market value of the line (including, unless otherwise mutually agreed, all facilities on the line or portion secondary to provide effective transportation services).

(2) The decision of the Commission shall be binding on both parties, except that the person who has offered to subsidize or purchase the line may withdraw the offer within 10 days of the Commission's decision. In such a case, the Commission shall immediately issue a certificate authorizing the abandonment or discontinuance, unless other offers are being considered pursuant to paragraph (1) of this subsection.

(3) If a carrier receives more than one offer to purchase or subsidize, it shall select the offerer with whom it wishes to transact business, and complete the sale or subsidy agreement, or request that the Commission establish the conditions and amount of compensation prior to the 60th day after the date on which another was published under subsection (c) of this section. If no agreement on subsidy or sale is reached within the 60-day period and the Commission has not been requested to establish the conditions and amount of compensation, any other offerer may request that the Commission establish the conditions and amount of compensation. If the Commission has established the conditions and amount of compensation and the original offer has been withdrawn, any other offerer may accept the Commission's decision within 20 days of such decision, and the Commission shall require the carrier to enter into a sale or subsidy agreement with such offerer, if such sale or agreement interprets the Commission's decision.

(4) No purchaser of a line or portion of a line sold under this section may transfer or discontinue service on such line prior to the end of the second year after consummation of the sale, nor may such purchaser transfer such line, except to the carrier from whom it was purchased, prior to the end of the fifth year after consummation of the sale.

(5) Any subsidy provided under this section may be discontinued on notice of 60 days. Unless, within such 60-day period, another financially responsible party enters into a subsidy agreement at least as beneficial to the carrier as that which was or was to be discontinued, the Commission shall, at the carrier's request, immediately issue a certificate authorizing the abandonment or discontinuance of service on the line.

olidated Rail Corporation
ication for Abandonment

Docket AB-167
Sub No. 641 N

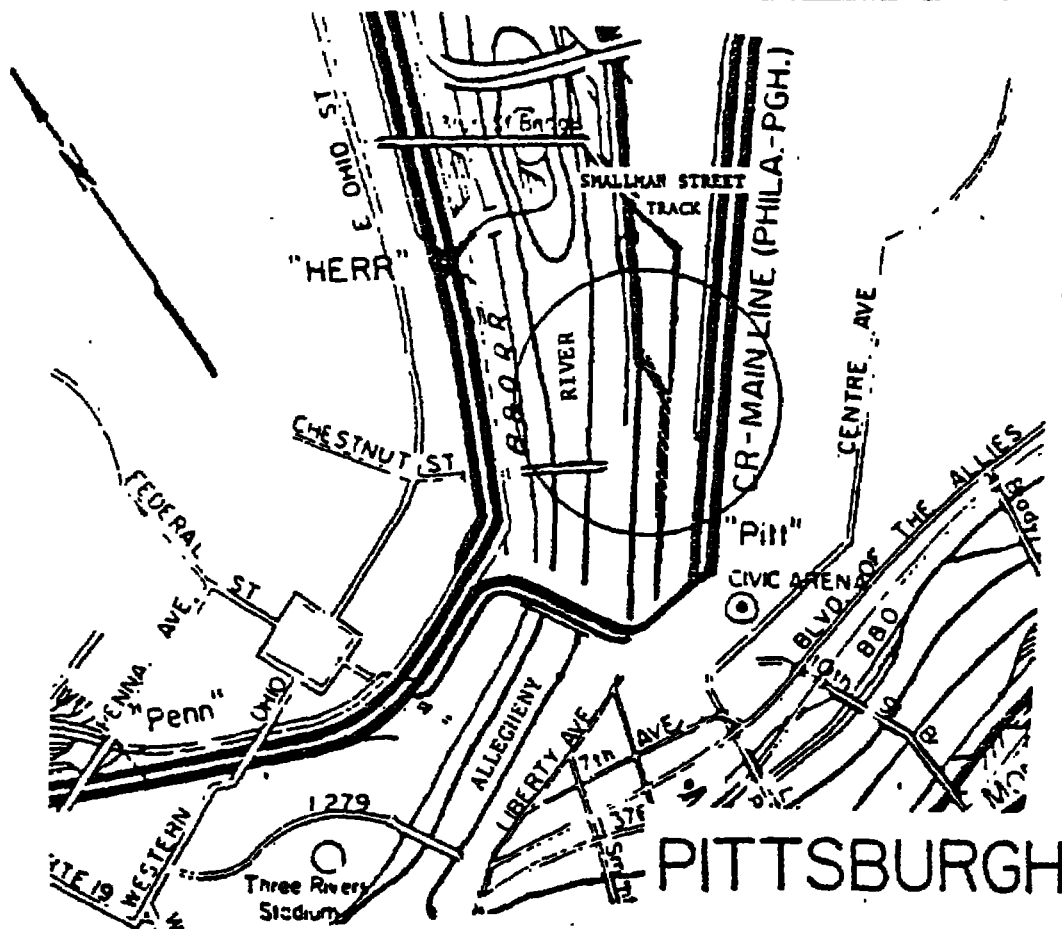
EXHIBIT B
LOCATION AND MAP

SMALLMAN STREET TRACK

In Pittsburgh

E. of 14th Street (Approx. M.P. 0.3) to
East of 24th Street (Approx. M.P. 0.85)

State(s): PA Counties: Allegheny



PROPOSED ABANDONMENT

EXHIBIT C

REVENUE AND COST DATA

SMALLMAN STREET TRACK

YEAR 1982 CARLOADS 187

| Line No | | Base Yr 1982 | Est Sub 1982 | Proj Sub 1984 |
|---------|-----------------------------------|-----------------|-----------------|------------------|
| 1 | Grt Rev Orig/Term On Branch . . . | \$ 173167 | \$ 173167 | \$ 181999 |
| 2 | All Other Rev and Income. . . . | . 690 | 690 | 690 |
| 3 | Total Revenues Attributable . . . | 173857 | 173857 | 182689 |
| 4a | Maint. of Way & Structures. . . . | 3484 | 3484 | 3993 |
| b | Maintenance of Equipment. . . . | 2569 | 2569 | 2674 |
| c | Transportation. | 6762 | 6762 | 7262 |
| d | General Administration. | 0 | 0 | 0 |
| e | Freight Car Costs | 12214 | 12214 | 12629 |
| f | Revenue Taxes | 0 | 0 | 0 |
| g | Property Taxes. | 0 | 0 | 0 |
| | Total On-Branch Costs | 25029 | 25029 | 26558 |
| 5 | Off Branch Costs. | 266027 | 266027 | 287841 |
| 6 | Total Avoidable Costs | 291056 | 291056 | 314399 |
| | Subsidization Costs | ////////// | | |
| 7 | Rehabilitation. | ////////// | 211607 | 211607 |
| 8 | Administrative Costs. | ////////// | 10431 | 10961 |
| 9 | Casualty Reserve Account. . . . | ////////// | 1203 | 1339 |
| 10 | Total Subsidization Costs . . . | ////////// | 223241 | 223907 |
| | Return on Valuation | ////////// | | |
| 11a | Working Capital | ////////// | 969 | 925 |
| b | Net Salvage Value | ////////// | 0 | 0 |
| c | Estimated Value of Real Estate. . | ////////// | 11650 | 11650 |
| | Total Valuation of Property . . | ////////// | 12519 | 12575 |
| 12 | Rate of Return. | ////////// | 17.7% | 17.7% |
| 13 | Total Return on Value | ////////// | 2216 | 2226 |
| 14a | Avoidable Loss From Operations. . | 117199 | ////////// | ////////// |
| b | Opportunity Costs | 2598 | ////////// | ////////// |
| c | Total Avoidable Loss. | 119797 | ////////// | ////////// |
| 15 | Estimated Subsidy | ////////// | 342656 | 357843 |
| | (Lines 6, 10 and 13 less line 3) | ////////// | ===== | ===== |

Date computed: March 8, 1984

Exhibit C, page 1 of 2

Consolidated Rail Corporation
Application for Abandonment

Sub No. 641 N

EXHIBIT C
REVENUE AND COST DATA

SMALLMAN STREET TRACK

(Approx. M.P. 0.3) to (Approx. M.P. 0.85)

Revenue and Cost Data calculated using the cost methodologies and standards prescribed by 49 CFR, Part 1121, as modified by the Commission in Finance Docket 29623.

| LINE NO | FOOTNOTES |
|------------|---|
| 4F | Conrail pays no state revenue taxes as a result of an exemption from such taxes provided to Conrail by Section 217 (c) of the Regional Rail Reorganization Act of 1973, as amended by the Northeast Rail Service Act of 1981. |
| 4G | Conrail pays no state-levied property taxes as a result of an exemption from such taxes provided to Conrail by Section 217 (c) of the Regional Rail Reorganization Act of 1973, as amended by the Northeast Rail Service Act of 1981. Conrail continues to pay property taxes levied by political subdivisions of States, as such taxes are not subject to the exemption. |
| 7 | Rehabilitation required during first subsidy year only. Five year rehabilitation is estimated at \$ <u>211,607</u> . |
| 11B | See Exhibit D (Estimated Net Liquidation Value) of this application for an explanation of the basis for establishing the Net Salvage Value. |
| 11C | See Exhibit D (Estimated Net Liquidation Value) of this application for an explanation of the basis for establishing the Estimated Value of Real Estate. |

Consolidated Rail Corporation
Application for Abandonment

Sub No. 641 N

EXHIBIT D

ESTIMATED NET LIQUIDATION VALUE

SMALLMAN STREET TRACK

(Approx. M.P. 0.3) to (Approx. M.P. 0.85)

| | | |
|-----|--|-----------|
| 1. | Gross track salvage | \$ |
| 2. | Takeup costs: | |
| a. | Common track | |
| b. | Turn outs | |
| c. | Road crossing restoration | |
| 3. | Total takeup costs | |
| 4. | Net track salvage | |
| | (line 1 less line 3) | |
| 5. | Gross salvage - communications and signals | |
| 6. | Cost to remove | |
| 7. | Net communications and signal salvage | |
| | (line 5 less line 6) | |
| 8. | Net bridge and building salvage | |
| 9. | Total net salvage value | 0 |
| | (sum of lines 4, 7 and 8) | |
| 10. | Estimated value of underlying real estate | 11,650 |
| 11. | Estimated Net Liquidation Value | \$ 11,650 |
| | (line 9 plus line 10) | |

FOOTNOTES

- 9 Street railroad. The gross salvage value is exceeded by or equal to the costs for removal.
- 10 Current appraised value. Most of the Smallman St. Branch lies within the bed of Smallman St. When the track leaves Smallman St., it crosses private property by track easement (22nd St. -23rd St.). The real estate value is for a triangular parcel at approximately m.p. 0.85, between 23rd and 24th Streets.

ONRAIL



file
MEMORANDUM

6-4C Nov 12-82

DATE: September 13, 1984

TO: G. M. Williams, Jr.
Room 1601
1528 Walnut Street

FROM: Charles E. Mechem
Room 1138
Six Penn Center

SUBJECT: ICC Abandonment Orders

BSM

By orders served September 7 and 10, copies of which are attached, the Commission has approved the following Window II abandonments:

| <u>Line</u> | <u>Sub No.</u> |
|------------------------|----------------|
| Blockhouse Run Track | 561 <i>Ryl</i> |
| Smallman Street Branch | 641 |

I will appreciate your letting me know when Conrail implements these orders by (1) embargoing the lines and (2) cancellation of relevant tariffs.

CEM/km

Enclosures

cc: R. B. Hasselman
C. W. Owens
D. W. Mattson
J. E. Musslewhite
C. E. Wogan
W. H. Sheppard
B. L. Frye
B. J. Gordon
K. L. MacKavanagh
J. A. Sees
J. E. Sandefur
J. W. Dietz
J. T. Sullivan
E. H. Follweiler
W. B. Newman, Jr.
J. H. Beer
R. E. Gratz

SERVICE DATE

SEP 10 1984

DI

INTERSTATE COMMERCE COMMISSION

CERTIFICATE AND DECISION

Docket No. AB-167 (Sub-No. 641N)

CONRAIL ABANDONMENT IN ALLEGHENY COUNTY, PA

Decided: September 7, 1984

On June 11, 1984, Consolidated Rail Corporation (Conrail) filed an application pursuant to section 308 of the Regional Rail Reorganization Act of 1973^{1/} to abandon a total of 0.55 miles of track described as the Smallman Street Branch in Pittsburgh from a point east of 14th Street (approximately Milepost 0.3) to a point east of 24th Street (approximately Milepost 0.85), in Allegheny County, PA.

Under section 308(c) the Commission must grant any application for abandonment filed by Conrail within 90 days after the date such application is filed unless an offer of financial assistance is made pursuant to section 308(d) during that 90-day period.

The time for the filing of offers of financial assistance has expired without a bona fide offer. In the absence of such an offer, an appropriate certificate and decision should be entered.

It is certified: Conrail is authorized to abandon the line described above.

It is ordered:

This certificate and decision is effective upon service.

By the Commission, Division 1, Commissioners Sterrett, Taylor, and Andre. Commissioner Taylor is assigned to this Division for the purpose of resolving tie votes. Since there was no tie in this matter, Commissioner Taylor did not participate.

(SEAL)

James H. Bayne
Secretary

^{1/} This section was added by the Northeast Rail Service Act of 1981. Pub. L. 97-35.

CONRAIL

L. STANLEY CRANE
CHAIRMAN AND
CHIEF EXECUTIVE
OFFICER

Sub 641
8F9
2/10
have a good trip.

February 7, 1984

Honorable Mayor Richard S. Caliguiri
City of Pittsburgh
513 City County Building
Pittsburgh, PA 15219

Dear Mayor Caliguiri:

I appreciate your concern relating to Conrail's potential abandonment of our Smallman Street track serving the Wholesale Produce Market in Pittsburgh's Strip District.

Ad
Please file w/ your abandonment
file. Recd.

I also know that you appreciate Conrail's need to ensure our continued profitability by focusing our scarce capital resources on Conrail lines that make a positive financial contribution and by divesting ourselves of those that don't. It is this need that motivated our filing of a Notice of Insufficient Revenue for the Smallman Street track.

It is clear that the Smallman Street track and the Produce Market have a long and complex history. Conrail is eager to work with you to clarify any outstanding issues regarding the City's purchase of the Produce Market and to pursue alternatives for continued rail service.

As you know, our Regional Market Development staff has met with your people several times to identify alternatives for preservation of rail service to the Produce Market. We understand that your staff will meet with the Produce Market shippers on February 8 to identify their long-term rail needs and to develop options to meet those needs. We look forward to working with you subsequent to that session to address and respond to the shippers' recommendations for continued rail service.

Mayor Richard S. Caliguiri
February 7, 1984
Page 2

I have asked Gery Williams, Assistant Vice President, Regional Market Development, and John Jaeger, Director, Real Estate, to come out to Pittsburgh during the week of February 13 to represent Conrail in furtherance of these discussions.

By this letter, I am formally committing to delaying the filing of our abandonment application with the Interstate Commerce Commission until March 1, as you requested. I am optimistic that Conrail can work with you to identify a solution to meet the transportation needs of your shippers consistent with Conrail's profitability requirements.

Very truly yours,

signed/L. Stanley Crane

cc:

| | | |
|-------------------|---|------------------------|
| S. M. Reed | - | 1838 Six Penn Center |
| J. A. Hagen | - | 1808 Six Penn Center |
| W. B. Newman, Jr. | - | 955 L'Enfant |
| R. W. Garbett | - | 1040 Six Penn Center |
| L. A. Huff | - | 901-1528 Walnut Street |
| B. B. Wilson | - | 1838 Six Penn Center |
| J. J. Kelly | - | 1040 Six Penn Center |

JFJ
cc: K. F. Williams (M.V.E.)
F.Y.D. JES
1/31/84 JES

FROM: L. Stanley Crane
Room 1838 - 6 PC

DATE: January 27, 1954

| TO | FOR |
|-----------------------|-------------------------------------|
| S. M. Reed | As information |
| R. W. Garbett | Handling |
| W. B. Newman, Jr. | Handling, sending me copy of reply |
| R. H. Platt | See me |
| J. W. Rowe | Comment |
| A. Schimmel | Recommendation |
| X G. H. Williams, Jr. | To note and return |
| | X Prepare a reply for my signature |
| | Clearing with Mr. Reed |
| | X Suggest you talk with J. V. Kelly |
| | who had conversation with |
| | Mayor Callaghan re this project. |

cc: S. M. Reed J. V. Kelly
R. W. Garbett H. B. Wilson
J. A. Hagan
Mr. A. Hagan

John Hagan
As info
1/30

op

City of Pittsburgh
Richard S. Caliguiri, Mayor

January 20, 1984

Mr. L. Stanley Crane
Chairman and Chief Executive Officer
Consolidated Rail Corporation
6 Penn Center Plaza
Philadelphia, PA 19104

Dear Mr. Crane:

I am greatly distressed that your railroad has initiated the process of abandoning trackage along Smallman Street in the City of Pittsburgh.

As you know, Conrail recently sold the Urban Redevelopment Authority of Pittsburgh the Wholesale Produce Market for \$1.5 million. We are presently rehabilitating this structure at a cost of almost \$2 million with the proceeds of a grant from the Economic Development Administration of the U.S. Department of Commerce. In addition, the Urban Redevelopment Authority has had to undertake legal action to try to remove a non-rail using tenant granted an unusually favorable long-term lease by Conrail's Real Estate Department prior to the sale.

3/2/81
#65776

The railroad was aware that we had planned to use the building to help stabilize employment in the Strip District's wholesale produce industry and that part of the value inherent in the purchase price of the property was rail access. Conrail also required us to use its rail service in the following terms of the Agreement of Sale:

"that Purchaser acknowledges that the basic use of said building is as a rail freight facility served directly by rail lines of Conrail (as Grantor) and Purchaser (as Grantee) further acknowledges that its primary public purpose in acquiring said premises is to rehabilitate said building in order to provide continued rental space for the wholesale produce industry and agrees to use its best efforts to continue it as such or some other rail-oriented use."

L. Stanley Crane
January 20, 1984
Page 2

We always looked forward to working with Conrail in increasing employment and rail shipments when the facility's rehabilitation was completed. The Company's action to seek abandonment of service therefore is inexcusable and intolerable. We believe the City of Pittsburgh has been seriously misled by Conrail and I have instructed our Law Department to pursue our rights under local, state and federal law to the fullest extent in this and related matters.

As Chairman of the U.S. Conference of Mayors Transportation Policy Committee, I am aware of the issues involved in your actions to rationalize the physical plant of the railroad and have worked with other Northeastern mayors to prevent the dismemberment of Conrail. I am prepared to work with you and the shippers affected in developing solutions to the service and revenue problems the railroad may have. The City has received letters of profound concern from rail users along the Smallman Street spur and we cannot allow our new Wholesale Produce Market to lose common carrier rail service.

Your staff has indicated informally that they will extend the date of filing for abandonment until March. I formally request that your filing be so delayed and hope that we can use the additional time to favorably resolve this matter.

Sincerely,



RICHARD S. CAMIGUIRI

/aml

Sub # 641

REGION Central
 L.C. 2229 BRANCH Smallman St. MILES .55
 FROM _____ TO _____
 FROM M.P. 0.3 TO M.P. 0.85
 VALUATION SECTION 7028 (21.3PA)

| MAP NO. | M.P. | TOTAL AREA | % FEE | FEE AREA |
|---------|------------|------------|-------|----------|
| 1 | 0.3 - 0.85 | | 0 | 0 |

Ordinances from the City of Pittsburgh

| | | | |
|-------------------|-------------|----------------------|----------|
| TOTAL % FEE | <u>-0.4</u> | TOTAL AREA FEE | <u>0</u> |
| TOTAL % REVERSION | <u>100%</u> | TOTAL AREA REVERSION | _____ |

AW 12-14

Sub # 641

L.C. 2229REGION CentralBRANCH Smallman St.MILES .55

FROM _____

TO _____

FROM M.P. 0.3TO M.P. 0.85VALUATION SECTION 7028 (21.3 Pa)

| MAP NO. | M.P. | TOTAL AREA | % FEE | FEE AREA |
|---------|------------|------------|-------|----------|
| 1 | 0.3 - 0.85 | | 0 | 0 |

Parcels are ordinances from the
City of Pittsburgh

TOTAL % FEE

-0.4

TOTAL AREA FEE

0

TOTAL % REVERSION

100%

TOTAL AREA REVERSION

AW
26-14

WINDOW 11 APPRAISAL REPORTS

| Sub No. | State | Line Name | Line Code | Milepost | | RE Reg | Area (Acres) | Appraised Value (\$) | Name of Appraiser | % Fee Title |
|------------|-------|-----------|--------------|----------|----|-----------|-----------------|-------------------------|----------------------|----------------|
| | | | | From | To | | | | | |

| | | | | | | | | | | |
|-----|----|-----------------|------|-----|------|----|-----|--------|-----------|---|
| 641 | PA | Smallman Street | 2229 | 0.3 | 0.85 | KH | .62 | 11,650 | J. Latham | 0 |
|-----|----|-----------------|------|-----|------|----|-----|--------|-----------|---|

Note: Most of the Smallman St. Branch lies within the bed of Smallman St. When the track leaves Smallman St., it crosses private property by track easement (22nd St. - 23rd St.). The real estate value is for a triangular parcel at approximately m.p. 0.85, between 23rd and 24th Streets.

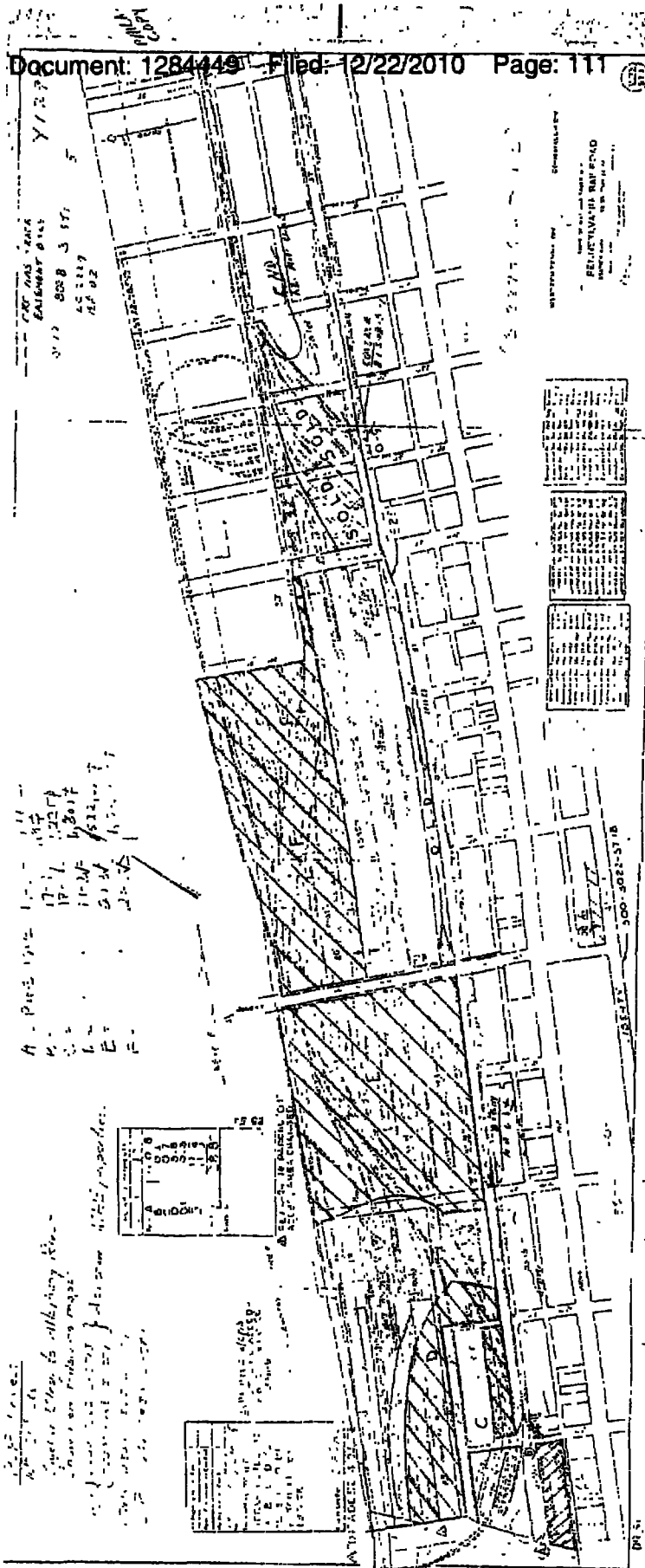


Exhibit D

**IN THE
UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

| | | |
|------------------------------------|---|------------------|
| The Buncher Company, |) | |
| |) | |
| Petitioner, |) | |
| |) | |
| v. |) | |
| |) | Case No. 10-1225 |
| Surface Transportation Board |) | |
| |) | |
| and |) | |
| |) | |
| United States of America, |) | |
| |) | |
| |) | |
| Respondents. |) | |
| |) | |
| |) | |
| Allegheny Valley Railroad Company, |) | |
| |) | |
| Intervenor for Respondents. |) | |

**AFFIDAVIT OF JOSEPH M. JACKOVIC
IN SUPPORT OF PETITIONER THE BUNCHER COMPANY'S
MOTION TO ADDUCE ADDITIONAL EVIDENCE**

| | | |
|------------------------------|---|-----|
| COMMONWEALTH OF PENNSYLVANIA |) | |
| |) | SS: |
| COUNTY OF ALLEGHENY |) | |

1. My name is Joseph M. Jackovic and I am an adult individual residing in the Commonwealth of Pennsylvania.

2. I am Executive Vice President and General Counsel of The Buncher Company ("Buncher"). My business address is Penn Liberty Plaza I, 1300 Penn Avenue, Suite 300, Pittsburgh, Pennsylvania 15222-4211.

3. I am authorized to make this Affidavit on behalf of Buncher.

4. I am familiar with the matter and proceedings related to the Petition filed by Allegheny Valley Railroad Company ("AVRC") with the Surface Transportation Board ("STB") and pleadings submitted by Buncher, and I submitted Verified Statements on behalf of Buncher in connection with the proceedings before the STB.

5. Following the submission of the Petition by AVRC, Buncher obtained a copy of the Abandonment Application filed by Consolidated Rail Corporation ("Conrail") in February 1984 ("February 1984 Abandonment Application") and a copy of the Interstate Commerce Commission Order ("ICC Order") issued in May 1984 which authorized Conrail to abandon the so-called "Valley Industrial Track". That information and a copy of the February 1984 Abandonment Application and ICC Order were submitted to the STB as part of the proceedings before the Board on AVRC's Petition, as evidence that the Valley Industrial Track, which was at one time located on Buncher's property, had been abandoned by Conrail in 1984 and therefore no easement for that track could be held by AVRC.

6. Despite Buncher's submission of the February 1984 Abandonment Application as to the Valley Industrial Track, the STB's Decision issued in June

2010 accepted a theory first offered in a Rebuttal by AVRC that Conrail owned and operated two through lines of railroad in the vicinity of Buncher's property and that the February 1984 Abandonment Application related not to track previously located on Buncher's property but rather to track located within Smallman Street, which is located a block away from Buncher's property.

7. Following the receipt of the Decision from the STB, Buncher made requests for information to Conrail and its successors including Norfolk Southern to inquire whether there were abandonment applications and other information relating to any track in Smallman Street. Based upon the allegations that have been made by AVRC in its Petition, previous searches of ICC abandonment records had sought information relating to abandonment applications with respect to the Valley Industrial Track or any tracks within Buncher's property but not information relating to any track within Smallman Street.

8. Information relating to Conrail abandonment applications and orders is not readily available, and has to be found, if at all, in archives of the ICC or, in many instances, the records of successor railroads to Conrail. There is no comprehensive index or on-line search tool available to the public for abandonment filings prior to 1995.

9. As a result of the inquiries made following receipt of the Decision by the STB, Buncher eventually received from Norfolk Southern copies of three Abandonment Applications filed by Conrail with respect to track located in

Smallman Street including track between 16th Street and 21st Street ("Smallman Street Abandonment Applications"). Copies of the Smallman Street Abandonment Applications are attached to Buncher's Motion to Adduce Additional Evidence as Exhibit "A", "B" and "C". The Abandonment Applications are identified as follows:

a. Application of Consolidated Rail Corporation Pursuant to Section 309(c) of the Regional Rail Reorganization Act of 1973, as Amended by Section 1156 of the Northeast Rail Service Act of 1981, for Approval of the Abandonment of a Portion of the Smallman Street Track in Allegheny County, Pennsylvania, Dated May 23, 1984. Docket No. AB167 (Sub No. 571N);

b. Application of Consolidated Rail Corporation Pursuant to Section 308(c) of the Regional Rail Reorganization Act of 1973, as Amended by Section 1156 of the Northeast Rail Service Act of 1981, for Approval of the Abandonment of a Portion of the Smallman Street Track in Allegheny County, Pennsylvania, Dated May 23, 1984. Docket No. AB167 (Sub No. 572N);

c. Application of Consolidated Rail Corporation Pursuant to Section 308(c) of the Regional Rail Reorganization Act of 1973, as Amended by Section 1156 of the Northeast Rail Service Act of 1981, for Approval of the Abandonment of the Smallman Street Branch in Allegheny County, Pennsylvania, Dated June 8, 1984. Docket No. AB167 (Sub No. 641N).

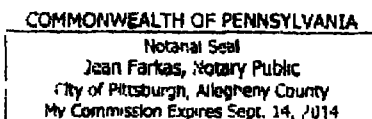
10. The Smallman Street Abandonment Applications were filed by Conrail in May 1984 and June 1984 following the filing of the February 1984 Abandonment Application with respect to the "Valley Industrial Track." The Smallman Street Abandonment Applications specifically relate to track located within Smallman Street. The Smallman Street Abandonment Applications demonstrate that the earlier Abandonment Application filed in February 1984 relating to the "Valley Industrial Track" did not, in fact, apply to track within Smallman Street but rather applied to the Valley Industrial Track that was once located on Buncher's property. The foregoing facts are directly contrary to the "2-line theory" offered by AVRC and accepted by the STB.

I, Joseph M. Jackovic, Executive Vice President and General Counsel, The Buncher Company, swear or affirm and verify that the statements made in the foregoing Affidavit are true and correct to the best of my knowledge, information and belief.


Joseph M. Jackovic

Sworn to and subscribed
before me this 26th day
of DECEMBER, 2010.

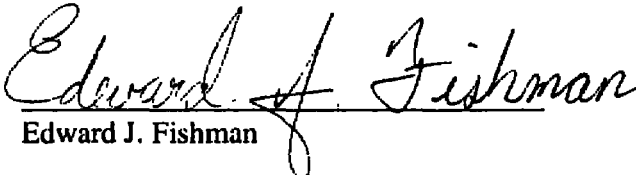

Notary Public



CERTIFICATE OF SERVICE

I hereby certify that on April 11, 2011, I served a copy of the foregoing Opening Brief by first class, United States mail, postage prepaid, addressed as follows:

Richard R. Wilson
Richard R. Wilson, PC
518 N. Center Street, Ste. 1
Ebensburg, PA 15931


Edward J. Fishman